

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

THE E.W. SCRIPPS COMPANY  
AND SUBSIDIARIES,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No. C-1-01-434

Judge Dlott

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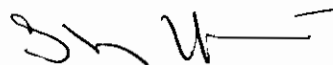
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**UNITED STATES' MOTION FOR SUMMARY JUDGMENT**

The United States of America, under Fed. R. Civ. P. 56, moves for summary judgment against The E.W. Scripps Company and subsidiaries, on the grounds that there is no genuine issue of material fact and the United States is entitled to judgment as a matter of law. In support of this motion, the United States is simultaneously filing a memorandum in support of this motion.

GREGORY G. LOCKHART  
United States Attorney



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FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

THE E.W. SCRIPPS COMPANY	)	
AND SUBSIDIARIES,	)	
	)	Case No. C-1-01-434
Plaintiff,	)	
	)	Judge Dlott
vs.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
_____	)	

**UNITED STATES' MEMORANDUM IN SUPPORT OF ITS  
MOTION FOR SUMMARY JUDGMENT**

**INTRODUCTION**

In 1988, during the course of an audit of Scripps 1984 tax year, Scripps and the IRS agreed that Scripps would change its accounting method from a cash to an accrual basis. As of December 31, 1990, neither Scripps nor the IRS had calculated the amount, if any, that this change would increase Scripps's 1986 tax liability. Had Scripps made such a calculation, it would have found no additional tax was due for its 1986 taxable year. However, in December 1990, Scripps wanted to both take a tax deduction for interest paid during the year and stop the running of any interest that might have been due. On December 31, 1990, Scripps remitted \$ 3,500,000 to the IRS for its 1986 year and claims that this remittance should have been treated as a tax payment, rather than a deposit, despite the fact that a remittance that does not satisfy an asserted tax liability should not be treated as the 'payment' of a tax. Ameel v. United States, 426 F.2d 1270, 1273 (6<sup>th</sup> Cir. 1970). The United States contends that because there was no asserted or proposed tax liability for the 1986 taxable

year, the remittance cannot be classified as a payment of a tax liability.

The distinction between a deposit and payment can be important for several reasons. See generally, Philip M. Jones, The Supreme Court Clarifies the Role of Assessments in Tax Controversies, 92 J. Tax'n 275 (May 2000). For example, the remittance of a payment allows the IRS to retain the funds remitted. However, a taxpayer is generally allowed to receive a return of a deposit at any time, unless or until a deposit converts to a payment upon assessment of a liability. See New York Life Insurance Company v. United States, 118 F.3d 1553, 1560 (Fed. Cir. 1997) ("The essence of a deposit is that the taxpayer is entitled to recover it without regard to the merits of the underlying tax claim.") However, for purposes of stopping the accrual of interest on a tax liability, either a deposit or a payment will suffice. Fortugno v. Commissioner, 353 F.2d 429, 434 (3d Cir. 1965). For purposes of the present action, if the December 31, 1990 remittance was a payment, Scripps is entitled to statutory interest on the amount for the entire time period it was held by the United States as a payment. If the remittance was a deposit, Scripps is not entitled to statutory interest for the time period it was held by the United States.

Although the term "payment" frequently appears in the Internal Revenue Code, the concept of a "deposit" does not.<sup>1</sup> See New York Life Insurance Company v. United States, 118 F.3d 1553, 1556 (Fed. Cir. 1997). Rather the concept of the "deposit of taxes" stems from the Supreme Court's decision of Rosenman v. United States, 323 U.S. 658 (1945). See New York Life Insurance Company v. United States, 118 F.3d 1553 (Fed. Cir. 1997). In Rosenman the executors of an estate sent a check to the Internal Revenue Service stating that payment was made under "protest and

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<sup>1</sup> The term "deposit" is found in the Internal Revenue Code in a remittance sense only in reference to: (1) excise taxes on gasoline, liquor, and air or sea tickets ( see § 6302(f)); (2) amounts withheld at the source and required to be deposited at certain financial institutions ( see § 6302(g) and § 6656); (3) certain partnership items ( see § 6226); (4) to certain bonding requirements ( see § 7101 and § 7485); (5) retirement provisions for Tax Court judges ( see § 7447 & § 7448); (6) amounts seized in criminal investigations ( see § 7608); (7) the process for banking collected taxes, sales proceeds, et ( see § 7809).

duress” and solely for the purposes of avoiding penalties and interest. 330 U.S. at 660. The Supreme Court, in holding that the remittance was not a payment of a tax liability, rather it was a “deposit in the nature of a cash bond for the payment of taxes thereafter found to be due,” (*Id.* at 662), stated:

the taxpayer did not discharge what he deemed a liability nor pay one that was asserted. There was merely an interim arrangement to cover whatever contingencies the future might define....by allowing such a deposit arrangement, the Government safeguards collection of the assessment of whatever amount tax officials may eventually find owing from a taxpayer, while the taxpayer in turn is saved the danger of penalties on an assessment made, as in this case, years after a fairly estimated return has been filed.

Rosenman, 323 U.S. at 662 & 663.

### FACTS

1. In 1988, in closing the audit of its 1984 taxable year, Scripps and the IRS agreed that Scripps would change its accounting method from a cash basis to an accrual basis. Exhibit 47 at p. 253 to the Carroll Deposition..

2. On or about December 10, 1990, Michael Carroll asked Jerry Hackman to prepare a calculation of additional taxes and interest Scripps would owe for its 1986 year due to the change in accounting method. Carroll Dep. at p. 9 lines 5-16 & p. 15 - 17; Exhibit 7 to Carroll Deposition.

3. Carroll is the corporate tax director for Scripps and has been head of the tax department at Scripps since 1982. Carroll Dep. at p. 4 - 5. Hackman is the tax manager of federal audits for the Scripps Corporation. Hackman Dep. at p. 4.

4. Carroll states that Scripps wanted to make a payment with respect to any increased liability due to the change in accounting method because Scripps wanted to stop the running of any interest and to deduct the payment of interest on its 1990 tax return. Carroll Dep. at p. 11 lines 8 - 11.

5. Before asking Hackman to make this calculation, Carroll had asked the IRS agent to

calculate the amount of additional taxable income, if any, that would be due for the 1985 and 1986 tax years due to the change in accounting method. Carroll Dep. at p. 13 lines 19-22. In response, the Revenue Agent stated that he would not be able to make any such calculations before the 1990 year-end. Carroll Dep. at p. 13 lines 22-24.

6. When Hackman prepared his calculation, he did not refer to Scripps's 1986 tax return that had been previously filed with the IRS. Hackman Dep. at p. 20 lines 8-12.

7. Scripps had previously filed a 1986 income tax return reflected a net operating loss of \$ 62 million. Carroll Dep. at p. 24 line 7. Scripps carried back the 1986 net operating loss to its 1983 & 1984 taxable years. Carroll Dep. at p. 26 lines 6-9; Hackman Dep. at p. 31 lines 6-13.

8. Hackman's calculation consisted of estimating the increase in income created by the change in accounting method for the 1985 and 1986 tax years and dividing by two to allocate the increased income between the 1985 and 1986 tax years. Hackman Dep. at p. 23 lines 7-9; Exhibit 49 to Hackman Deposition.. Hackman then multiplied the increase in income by the applicable federal income tax rate for each tax year. Hackman Dep. at p. 24 lines 17-25; Exhibit 49 to Hackman Deposition.

9. Based upon Hackman's estimates, Scripps's total income for 1986 would have been increased by \$ 8 million. Hackman Dep. at p. 30 lines 7-17.

10. Based upon the tax return filed by Scripps for its 1986 taxable year, the increase in \$ 8 million in income for 1986 would not increase Scripps's tax liability for the 1986 taxable year, (Hackman Dep. at p. 30 lines 17 - 25 & p. 31 lines 1-2), since the 1986 tax return filed by Scripps reported a \$62 million loss. Hackman Dep. at p. 31 lines 6-10; Exhibit 6 to Hackman Deposition. An \$ 8 million increase in income for the 1986 taxable year would have still left Scripps with a \$ 56 million income loss for the year. As such, Hackman's calculation bore no resemblance to the actual

effect the change in accounting method would have on Scripps's 1986 tax liability.

11. Since the 1986 operating loss was carried back to Scripps's 1983 and 1984 taxable years, (Hackman Dep. at p. 31 lines 11-20), a change in the net operating loss by \$ 8 million for 1986 could only change Scripps's tax liability for the 1983 and 1984 taxable years. Hackman Dep. at p. 31 lines 6-13.

12. Carroll looked at the summary Hackman prepared, but did not look at the details behind the summary. Carroll Dep. at p. 9 lines 14-16.

13. On December 31, 1990, E.W. Scripps, Inc. delivered a check in the amount of \$ 7,000,000.00 to the Internal Revenue Service stating that the funds were to "prepay and thereby stop the interest accumulation on the 1985-86 adjustments anticipated..." The letter accompanying the remittance designated how the funds should be applied to the 1985 and 1986 tax accounts of E.W. Scripps. Exhibit 4 to Carroll Deposition; Carroll Dep. at p. 7 - 8.

14. The letter and check in the amount of \$ 7,000,000 were hand-delivered to the IRS by Hackman. Exhibit 47 to Hackman Deposition; Hackman Dep. at p. 7 - 8.

15. Scripps had previously sent remittances to the IRS with the intent of halting the running of interest and obtaining interest deductions. On December 22, 1988, E.W. Scripps, Inc. delivered a check in the amount of \$ 9,000,000.00 to the Internal Revenue Service stating that the funds were to "prepay and thereby stop the interest accumulation on the 1982 - 1984 adjustments anticipated..." The letter accompanying the remittance stated that the funds were to be treated as a cash bond and designated how the funds should be applied to the 1982, 1983, and 1984 tax accounts of E.W. Scripps. Exhibit 1 to Carroll Deposition; Carroll Dep. at p. 7 - 8. E.W. Scripps was allowed an interest deduction for the amount of designated interest that it paid with respect to the 1988 payment. Hackman Dep. at p. 37 lines 12-24.

16. When Hackman delivered the December 31, 1990 remittance to the IRS, he was given a photocopy of a Form 3244-A, IRS Payment Posting Voucher, that indicated the remittance was being treated as a cash bond by the IRS. Hackman Dep. at p. 8 lines 15-25 & p. 9 line 8.

### ARGUMENT

The December 31, 1990 remittance to the IRS by Scripps could not have been a payment on Scripps's 1986 tax liability because neither Scripps nor the IRS had asserted, proposed, or calculated a tax liability for the 1986 tax year. If such a calculation had been made, Scripps would have determined that it had no increased tax liability for its 1986 taxable year. An essential factor in determining whether a remittance is to be treated as a payment or a deposit is whether the remittance satisfies an asserted tax liability. Courts have consistently held that a remittance that satisfies an asserted tax liability is a payment and that a remittance that does not satisfy an asserted liability is a deposit. See Consolidated Edison Company of New York, Inc. v. United States, 941 F. Supp. 398, 401 (S.D. N.Y. 1996); see also Ameel v. United States, stating "[t]his much is clear: (1) a remittance is not per se 'payment' of the tax; (2) a remittance that does not satisfy an asserted tax liability should not be treated as the 'payment' of a tax; and (3) an essential factor in 'payment' before assessment is the satisfaction or discharge of what the taxpayer deems a liability. 426 F.2d 1270, 1273 (6<sup>th</sup> Cir. 1970)(citing Mertens, Law of Federal Taxation, vol. 10, § 58.27 at 79 (1964 ed.)). That essential factor, an asserted tax liability, is missing in the present case.

In Ameel, the executrix of an estate filed the estate tax return and paid the tax shown due on the return. The return was audited and the IRS computed an additional tax due. The executrix agreed to the additional tax and made payment. A new administrator of the estate was appointed and decided that the additional assessment against the estate was incorrect and filed a claim for



refund beyond the two year period from payment for filing a claim for refund. The estate argued that it had not made a payment of the taxes, but rather submitted a deposit as defined in Rosenman. The Sixth Circuit, in holding that the estate had made a payment, not a deposit, stated:

In general, a tax is considered 'paid' for purposes of the running of the period of limitations when a taxpayer files his return accompanied by his payment. . . . On the other hand, where this is no tax liability computed and proposed, a remittance is to be treated as a cash bond to stop the running of interest on the amount 'dumped,' Busser v. United States, 130 F.2d 537 (3d Cir. 1942), or deposited until a more definite determination of the tax liability is asserted by the Government. Rosenman v. United States, 323 U.S. 658 (1945). In such cases, 'payment' occurs when the indefinite tax liability is further defined; such as by a formal assessment of a definite amount.

Ameel, 426 F.2d 1270 at 1272.

Here, there was no tax liability defined by either Scripps or the IRS. Scripps's 1986 return for the year, as filed, reflected a \$ 62 million operating loss. Scripps's accountant estimated that for the 1986 taxable year, the change in accounting method would have increased Scripps's income by \$ 8 million. Adding this \$ 8 million of additional income to the \$ 62 million loss reflected on Scripps's previously filed return would have led to a \$ 56 million loss for the year and no potential tax liability. Even a glance at the first page of Scripps's filed return for the year would have born out this conclusion.

Scripps, however, did not consult its previously filed tax return and did not compute whether any additional tax liability would be due for its 1986 taxable year. Rather, Scripps, in pursuit of an interest deduction for its 1990 tax year, multiplied its increased income figure by the tax rate and guessed that interest would be \$ 1.5 million. It then "dumped" the \$ 3.5 million with the IRS. This in no way was an attempt to calculate whether it had an increased liability and was not possibly an attempt to satisfy a determined or proposed deficiency or liability. Since there was no asserted or proposed liability, the remittance cannot be considered a payment as there was no proposed liability



to discharge.

While under Ameel, there is no requirement that a final determination of the tax liability for a payment to be made, it is clear that some specific liability be asserted. The court recognized that in cases of “dumping” of funds with the IRS until “a more definite determination of tax liability is asserted ..., ‘payment’ occurs when the liability is further defined...” Id. at 1272. Similarly, the Holtvogt court, in dealing with a remittance made with an application for extension of time, noted “[m]ost of the cases where courts have found deposits rather than estimated payments have involved round figures (\$ 120,000 in Rosenman; \$ 25,000 in Risman), and it is certainly more likely that one would deposit a round amount than a precise figure like \$ 9,006.” Holtvogt v. United States, 887 F. Supp. 994, 1000 (S.D. Ohio 1995).

The “dumped” language in Ameel, which is particularly fitting in the present case, comes from a line of cases finding that a remittance that is “dumped” on the IRS where there is no indication on a return, or from a proposed liability from the IRS, can only be considered a deposit. See Wiltgen v. United States, 813 F. Supp. 1387, 1391 (N.D. Iowa 1992) citing Budd v. United States, 252 F.2d 456 (3rd Cir. 1957), Binder V. United States, 590 F.2d 68 (3d Cir. 1978), Charles Leich & Co. v. United States, 329 F.2d 649 (Ct. Cl. 1964); see also, Busser v. United States, 130 F.2d 537 (3<sup>rd</sup> Cir. 1942)(finding that a taxpayer cannot deposit its money with the Internal Revenue Service to collect an attractive interest rate, considerably higher than could be secured elsewhere). Dumping is precisely what Scripps did in this case. Without regard to whether it even had a tax liability, Scripps in pursuit of a \$1.5 million interest deduction for its 1990 tax year, dumped its remittance on the IRS. Under any analysis, Scripps’s remittance can only be characterized as a cash bond.

There are a host of cases discussing whether a particular remittance by a taxpayer is a

payment or a deposit. The Circuit Courts are not unanimous in the standards they apply in making such a determination.<sup>2</sup> However, the one common factor in every case is that there must be at least some proposed or determined liability before a remittance will be considered a payment. See Ameel v. United States, 426 F.2d 1270 (6<sup>th</sup> Cir. 1970), New York Life Insurance Company, 118 F.3d 1553 (Fed. Cir. 1997); Ewing v. United States, 914 F.2d 499 (4<sup>th</sup> Cir 1990) (“a payment results from the remittance by a taxpayer concomitant with the recognition of a tax obligation whether by filing with a return, resolution of a dispute by an agreement . . . or otherwise.”); Fortugno v. Commissioner, 353 F.2d 429 (3<sup>rd</sup> Cir. 1965)(holding there must be acquiescence of a proposed deficiency or assessment before a remittance is a payment); Moran v. United States, 63 F.3d 663 (7<sup>th</sup> Cir. 1995) (because notice of deficiency issued, the remittance was a payment as the taxpayers remittance was made in response to the notice of deficiency) overruled on different grounds Malachinski v. Commissioner, 268 F.3d 497 (7<sup>th</sup> Cir. 2001); Dubuque Packing v. United States, 233 F.2d 453 (8<sup>th</sup> Cir. 1956); Thomas v. Mercantile Nat. Bank, 204 F.2d 943 (5<sup>th</sup> Cir. 1953); Lewyt Corp. v. Commissioner, 215 F.2d 518 (2d Cir. 1954) affirmed in part and reversed in part on other grounds, 349 U.S. 237 (1955). In those cases where the liability was proposed or determined, the remittance is generally held to be a payment. In those cases where there is no determined liability, the remittance is held to be a deposit.

For example, in Malachinski v. Commissioner, 268 F.3d 497 (7<sup>th</sup> Cir. 2001), a remittance was

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<sup>2</sup> The fact-intensive inquiry sometimes pursued in the so-called “facts and circumstances” tests of some courts is often wasteful of judicial and taxpayer resources and should almost never be necessary. See, e.g., Ewing v. United States, 914 F.2d 499 (4<sup>th</sup> Cir 1990), stating that some of the factors that may be considered include the date the tax liability it defined, formal assessment, the taxpayer’s intent, how the government treated the funds, and whether there was a dispute over the amount of the liability at the time funds were remitted. It should, in particular, be unnecessary where, as here, there is no tax liability computed or proposed and the remittance is ‘dumped’ until a more definite determination for tax liability, if any, is asserted. In such a situation, it is unnecessary to look further to determine the intent of the parties or the other facts and circumstances used by some courts.

made during the course of an audit, but before a report proposing a deficiency was prepared. The Seventh Circuit found that because the remittance was made well before any liability was defined, it was a deposit. Id. at 508. However, in Ewing v. United States, 914 F.2d 499 (4<sup>th</sup> Cir. 1990), the taxpayers and the IRS had reached an agreement as to the amount of their deficiency. The next day, the taxpayers forwarded their remittance to the IRS. The Fourth Circuit held that because the remittance was “concomitant” with the recognition of a tax liability, it had to be a payment. Id. at 504. In factually similar case to the present, Consolidated Edison Company of New York, Inc. v. United States, 941 F. Supp. 398 (S.D. N.Y. 1996), Con Edison had already satisfied its tax obligations and incurred no tax deficiency for the years at issue. As such, the court held that Con Edison had no liability to be discharged and therefore there could be no payment of a tax for the years in which there was no additional tax liability. Id. at 401. Each of these cases is consistent with the Sixth Circuit’s Ameel decision in that without, at a minimum, a proposed or ascertained tax deficiency or liability, there can be no payment as there is no known liability to be extinguished.

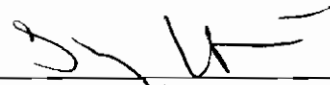
As shown, the present case presents the fact pattern of a “dumping” of funds with the intent to receive a tax deduction and to stop the running of any interest. The IRS told Scripps that it did not have time to calculate its additional tax liability, if any, by year end. The tax liability was undefined, and if Scripps had bothered to look at its previously filed tax return, it would have determined that no liability was possible based upon its own calculations. Under no theory can Scripps’s December 31, 1990 remittance be considered a payment of a tax liability.

### CONCLUSION

Scripps, in pursuit of an interest deduction for its 1990 taxable year, made a \$ 3.5 million remittance to the IRS without regard to whether it had a tax liability for the 1986 taxable year. It is not entitled to interest on the return of those funds. The United States is entitled to summary

judgment on this issue as there is no dispute that a calculation of Scripps's 1986 tax liability was not made, either by Scripps or by the IRS. Without at least a proposed liability, there can be no payment. The United States is entitled to judgment as a matter of law.

GREGORY G. LOCKHART  
United States Attorney

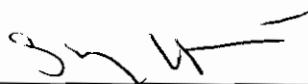
A handwritten signature in black ink, appearing to read 'Stacy Hallett', is written over a horizontal line.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' MEMORANDUM IN SUPPORT OF ITS FOR SUMMARY JUDGMENT has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 31<sup>st</sup> day of March 2003:

Paul P. Eyre  
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1 IN THE UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF OHIO

3 WESTERN DIVISION

4 - - -

5 THE E.W. SCRIPPS COMPANY :

6 AND SUBSIDIARIES :

7 PLAINTIFF :CASE NO.C-1-01-434

8 VS :

9 UNITED STATES OF AMERICA :

10 DEFENDANT :

11 - - -

12  
13 Deposition of MICHAEL W. CARROLL, a witness  
14 herein, taken by the defendant as upon  
15 cross-examination pursuant to the Federal Civil  
16 Rules of Procedure and pursuant to agreement among  
17 counsel as to time and place and stipulations  
18 hereinafter set forth, on December 6, 2002, at  
19 9:35 a.m., at the offices of Baker & Hostetler,  
20 312 Walnut Street, Cincinnati, Ohio 45202, before  
21 Sharlene D. Hall, Official Court Reporter within  
22 and for the State of Ohio.

23  
24  
25 ORIGINAL



1  
2 APPEARANCES:

3  
4 ON BEHALF OF THE PLAINTIFF:

5 PAUL EYRE, ESQ.  
6 BECKY LUTZKO, ESQ.  
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10 ON BEHALF OF THE DEFENDANT:

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15  
16  
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1	EXHIBITS	
	For Government:	
2	1 12/22/88 Letter	
3	Received	8
4	4 12/31/90 Letter	
	Received	8
5	7 12/10/90 Handwritten notes	
	Identified	17
6	8 12/12/90 Handwritten notes	
7	Identified	19
8	9 12/14/90 Handwritten notes	
	Identified	22
9	11 12/31/90 Handwritten notes	
10	Received	23
11	12 12/30/94 Letter	
	Received	23
12	16 3/8/95 Memo	
13	Identified	28
14	21 6/19/96 Handwritten notes	
	Identified	33
15	22 7/8/96 Handwritten notes	
16	Identified	37
17	23 7/9/96 Letter	
	Identified	40
18	33 1/30/98 Handwritten notes	
19	Identified	38
20	34 Scripps memo	
	Identified	38
21	46 4/13/99 Handwritten notes	
22	Identified	43
23	47 8/6/99 Letter	
	Identified	46
24	50 Tax Summary	
25	Identified	11

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MICHAEL W. CARROLL

being first duly sworn, was examined and testified  
as follows:

CROSS-EXAMINATION

BY MS. HALLETT:

Q. Can you state your name, please?

A. My name is Michael W. Carroll.

Q. And your address?

A. My home address or my business  
address?

Q. Home address.

A. 8385 Greenleaf -- that's one word --  
Drive, Cincinnati, Ohio 45255.

Q. And are you presently employed?

A. Yes.

Q. Whose your employer?

A. E.W. Scripps Company.

Q. What is your position?

A. I'm the corporate tax director.

Q. How long have you been the corporate  
tax director?

A. Been -- well, I started with the  
company in 1979, and I became the head of the tax  
department in 1982.

Q. Okay. And by "head of the tax

1 department," is that also the corporate tax  
2 director, the same position?

3 A. Initially, my title was a corporate  
4 tax manager, and at some point in time it became  
5 corporate tax director.

6 Q. Then what are your job duties as  
7 corporate tax director?

8 A. I'm the head of the tax department,  
9 that is, responsible for the preparation and  
10 filing of all of the federal and state and local  
11 income tax returns, the majority of the personal  
12 property returns. We also handle the various  
13 federal and state audits, and do planning and  
14 research, typical functions of a corporate tax  
15 department.

16 Q. Okay. And what about your educational  
17 background? Can you just briefly summarize your  
18 educational background?

19 A Sure. I have a bachelor's from Ohio  
20 State University, with a major in accounting.  
21 Then I have a MBA in finance from the University  
22 of Cincinnati.

23 Q. And when did you graduate with your  
24 bachelor's degree?

25 A. That would be June of 1972.

1 Q. Okay. And what about the MBA? What  
2 year did you --

3 A. That following year, June of '73.

4 Q. Okay. I'm going to show you two  
5 exhibits, Mr. Carroll. One is marked Exhibit 1,  
6 and one is marked Exhibit 4. If you could take a  
7 look at those for me please, and tell me if you've  
8 seen those before.

9 A. Yes, I have.

10 Q. Both of them?

11 A. Yes.

12 Q. Okay. Is that your signature on both  
13 of the documents?

14 A. That is my signature.

15 Q. Okay. Now, on Government Exhibit  
16 Number 1, can you describe in your own words what  
17 that document is?

18 MS. LUTZKO: Go ahead and read it,  
19 just to make sure.

20 THE WITNESS: Before? Okay.

21 MS. LUTZKO: Yeah.

22 Q. Take as much time as you need to read  
23 them.

24 A. This letter I prepared.

25 Q. This is Exhibit 1 you are referring

1 to?

2 A. Yes.

3 Q. Okay.

4 A. Exhibit 1, the letter dated December  
5 22nd, 1988. I prepared this letter as a  
6 transmittal letter to go with our payment to the  
7 IRS in 1988, because we had recently settled with  
8 the IRS and agreed to switch our newspaper  
9 divisions from the cash method to the accrual  
10 method of accounting, as of 1980. And we -- even  
11 though the audit was not finished yet, we wanted  
12 to prepay the majority of what we owed on the  
13 conversion from cash to accrual, and to stop the  
14 running of the interest on that portion.

15 Q. Okay. Now, with this transmittal  
16 letter, did you also submit a check to the  
17 Internal Revenue Service?

18 A. Yes.

19 Q. And what was the amount of that check?

20 A. Would have been for the amount here on  
21 the letter, which is \$9 million.

22 Q. Okay. Now, there are some  
23 calculations on the letter that show tax  
24 adjustment and interest.

25 A. Yes.



1 Q. Did you make those calculations?

2 A. I don't know if I made them. I  
3 probably had someone in my staff make them.

4 Q. Okay.

5 A. But approved them, yes.

6 Q. Okay. Would you have reviewed the  
7 calculations?

8 A. Yes.

9 Q. Okay. Now, as to the second letter,  
10 Exhibit Number 4, can you tell me what that is?

11 A. This letter, Exhibit 4, which is dated  
12 December 31st, 1990, was also a transmittal that I  
13 had prepared and I signed, which went with our  
14 prepayment of tax and interest for the years 1985  
15 and '86. Again, on the agreement that we had with  
16 the IRS to change the reporting for our publishing  
17 subsidiary unit from the cash method to the  
18 accrual method of accounting.

19 Q. Okay. Now there's -- with this  
20 letter, was there also submitted a check to the  
21 Internal Revenue Service?

22 A. Yes, there was.

23 Q. In the amount of \$7 million?

24 A. That is correct.

25 Q. Now, this letter also indicates a

1 break out of taxes and interest; is that correct?

2 A. That is correct.

3 Q. Did you make that calculation for  
4 those dollar amounts?

5 A. I asked Jerry Hackman on my staff to  
6 make the calculation. I looked it over and agreed  
7 that that's the proper amount of money that we  
8 should pay.

9 Q. When you say you looked it over, do  
10 you recall what documents you looked over?

11 A. He, Jerry, prepared a summary of  
12 showing, by newspaper subsidiary unit, the  
13 calculations of what additional tax and related  
14 interest that we would owe for these years. And I  
15 looked over that summary. I did not look over all  
16 the details that went into preparing that summary.

17 Q. Showing you what's been marked as  
18 Exhibit Number 50. Does that appear to be the  
19 summary Mr. Hackman prepared?

20 MS. HALLETT: I think you have it.

21 It's the same as 49.

22 MS. LUTZKO: Okay.

23 MS. HALLETT: I don't know why there's  
24 two.

25 MS. LUTZKO: Okay.

1 MS. HALLETT: Solves my problem. Took  
2 49 yesterday.

3 MS. LUTZKO: Forty-nine and 50 are  
4 equivalent, as far as we know. Yeah.  
5 Okay.

6 A. Yes. I believe this is the summary  
7 that Mr. Hackman prepared. Looks like the left  
8 edge is missing a little bit, but I can make out  
9 those, that those are the names of our newspaper  
10 subsidiary companies.

11 Q. Okay. Great. Now, I notice in the  
12 letter dated December 22nd, 1988, Government  
13 Exhibit 1, you referred to the remittance to the  
14 Internal Revenue Service as a cash deposit, I  
15 believe is the word you used.

16 A. I referred to it as a cash bond.

17 Q. Cash bond. I'm sorry. As a cash  
18 bond. Now, do you know why you used that word in  
19 that letter?

20 A. I believe before we made this payment  
21 we did some research on how such a payment should  
22 be made. And at that time we felt that it should  
23 be referred to as a cash bond.

24 Q. Okay. And the second letter,  
25 Government Exhibit Number 4, you do not refer to

1 the remittance as a cash bond. Is that your  
2 intent?

3 A. That is correct. That was definitely  
4 our intent, because between the time that we made  
5 the prepayment for 1988 and as we were researching  
6 the proper way to make the payment for 1990, we, I  
7 guess, we better understood the government's  
8 guidance, and we definitely wanted not only to  
9 stop the running of the interest, but also to be  
10 able to deduct the interest portion of the  
11 prepayment on our 1990 return.

12 So upon further educating ourselves on  
13 the best way to do that, we purposely did not  
14 refer to this as a cash bond, because we did not  
15 want it to be a cash bond. We wanted it to be a  
16 prepayment of tax deference and related interest,  
17 so I, specifically -- in fact, I used this letter  
18 as a reference in preparing the 1990.

19 Q. You mean the letter dated December  
20 22nd, 1988?

21 A. Yes. I took the -- yes, ma'am. I  
22 took the 1988 letter as a reference, specifically  
23 removed reference to cash bond because we did not  
24 want it to be a cash bond.

25 Q. Okay.

1           A.     We wanted it to be an advance payment  
2 of tax and interest.

3           Q.     Okay. With respect to the December  
4 22nd, 1988 remittance, I believe there was an  
5 amount of \$9 million. Do you know whether the  
6 Internal Revenue Service treated that as a cash  
7 bond?

8           A.     I -- I'm not sure how they treated it  
9 on their records.

10          Q.     At any time did you become aware of  
11 how the IRS treated it on their records?

12          A.     We may have after the fact. I don't  
13 know. I do know that when the 1988 audit was  
14 closed, that they allowed us to take the interest  
15 as a deduction in 1988, although normally, as we  
16 found out later, if a payment is a cash bond, you  
17 can't take the deduction. But they did allow a  
18 deduction.

19          Q.     Okay. Then that was for the 1988  
20 payment?

21          A.     Yes.

22          Q.     Okay. Now, with respect to the  
23 December 31st, 1990 remittance, do you know  
24 whether the -- how the IRS treated that? Did they  
25 treat that as a cash bond?

1           A.     That's why we are here today. By this  
2     letter and by verbally telling our team  
3     coordinator, Sid Saewitz, we told the IRS, and Sid  
4     Saewitz knew that we wanted this payment to be a  
5     prepayment of tax and interest and not a cash  
6     bond. That's why I, specifically, removed any  
7     reference to cash bond on this letter. And it was  
8     our intent to be a payment of tax. That's the way  
9     we thought that it was processed. That's the way  
10    Sid told us it was processed, until years later.

11           Q.     When you say "we," who are you  
12    referring to?

13           A.     "We" would be Scripps, in general,  
14    specifically myself and Mr. Hackman.

15           Q.     Okay. Do you recall, specifically,  
16    telling Mr. Saewitz that you want the remittance  
17    treated as a payment for the remittance that was  
18    made December 31st, 1990?

19           A.     Before we made this payment, I went to  
20    Mr. Saewitz and asked him if he would do the  
21    calculation of what the additional taxable income  
22    would be for these two years, 1985 and '86. He  
23    told me that he would not be able to do that for  
24    me before year-end. I then told him that we  
25    wanted to pay roughly what we owed on that agreed



1 adjustment, because we had agreed with the signing  
2 of the Form 870-AD, back in 1988 I believe, that  
3 we would switch all of our published subsidiaries  
4 to the cash method to the accrual method of  
5 accounting. And, in fact, on the previous two  
6 audit cycles, all of those calculations through  
7 the year 1984 had already been made and agreed to  
8 and paid. So the only thing left was these two  
9 years, because in 1985 and 1986, when we filed our  
10 returns, we had filed them under the cash method.

11 So I had told him that, you know,  
12 since then, and this was an agreed case, it was  
13 just a matter of calculating the additional tax,  
14 that we wanted to go ahead -- and no later than  
15 the end of 1990 -- make that payment, to not only  
16 stop the running of the interest, but also to get  
17 a deduction for the interest on our 1990 return.  
18 So Sid knew that that's what we wanted to do.

19 Q. Did you have more than one  
20 conversation with Mr. Saewitz about this before  
21 you actually made the remittance?

22 A. I can't give you dates or numbers of  
23 times, but I would say I probably had more than  
24 one discussion with him about that, yes.

25 Q. Okay. Okay. And I don't believe you

1 answered my question, but my question was: Do you  
2 know how the IRS treated the December 31st, 1990  
3 remittance? Did they treat it as a cash bond?

4 MS. LUTZKO: Objection, to the extent  
5 you know.

6 A. I'm sorry. Repeat the question.

7 Q. Do you know how the IRS treated the  
8 December 31st, 1990 remittance?

9 A. When -- sometime after this we asked  
10 for and received a transcript of our account. And  
11 on the transcript it said Advance Payment of Tax  
12 Deficiency. To me -- that clearly indicated to me  
13 that the IRS was treating it as a prepayment of  
14 tax and interest and not as a cash bond.

15 Q. Okay. And when you say "sometime  
16 after this," you mean sometime after December  
17 31st, 1990?

18 A. Yes.

19 Q. Okay. And who showed you the IRS  
20 transcript, do you recall?

21 A. I believe Mr. Saewitz gave it to Jerry  
22 Hackman, and Jerry Hackman showed it to me.

23 Q. Okay. Mr. Carroll, I'm going to show  
24 you what's been marked as Government's Exhibit  
25 Number 7. If you can take a look at that exhibit,

1 please, and tell me if you recognize it?

2 A. Yes, I do recognize the document.

3 Q. Okay. Is this in your handwriting?

4 A. Yes, ma'am.

5 Q. Okay. And can you tell me what that  
6 document is?

7 A. It is my notes of a conversation that  
8 I had with the gentleman that was the controller  
9 of the company at the time. And it refers to a  
10 conversation I also had with Jerry Hackman.

11 Q. Okay. Who's the gentleman that was  
12 the controller of the corporation?

13 A. His name was Robert Routt.

14 Q. Is that R-O-U --

15 A. R-O-U-T-T.

16 Q. About -- I guess about halfway down  
17 the document, I believe it starts with "I asked."

18 A. Yes.

19 Q. Is that correct? Could you read that  
20 for me? Just to make sure I -- I'm not making any  
21 comment about your handwriting.

22 A. I'm left-handed. I think that's  
23 pretty good.

24 How much of it do you want me to read?

25 Q. Just to the end of page.

1           A.     Okay. "I asked JPH" -- which is the  
2     reference to Jerry Hackman -- "to give me a rough  
3     idea of tax still due for 1985 and 1986. Per JPH  
4     neither we nor IRS have made the tax calculation  
5     for 1985 & 1986, but we know the accumulative  
6     1980-1986 amount, so we can back out amounts paid  
7     for 1980-81 & assessed & (mostly prepaid) for  
8     1982-84 to arrive at roughly what we owe for  
9     1985-86. Once I have it, will consider prepayment  
10    with DJC" -- who is Dan Castellini, who was the  
11    vice president and CFO of the company.

12           Q.     Okay. Now, that document is dated  
13    December 10th, 1990; is that correct?

14           A.     That is correct.

15           Q.     Now, does that give you any indication  
16    of about when you asked Mr. Hackman to make the  
17    calculation for the '85 and '86 liability?

18           A.     That would seem to be correct, yes.

19           Q.     Okay. And that sounds about right,  
20    December 10th?

21           A.     Yes, I would think so.

22           Q.     Okay. Great.

23                   (Mr. Eyre left room.)

24           Q.     Mr. Carroll, I'd like to show you  
25    what's been marked as Government Exhibit Number 8.

1 A. Sure.

2 Q. If you can take a look at that  
3 document please. Tell me if you recognize it.

4 A. Yes, I recognize this document.

5 Q. Okay. Is this in your handwriting?

6 A. Yes, it is.

7 Q. Okay. At the very top like it has  
8 initials "TSO."

9 A. That's how I refer to tax saving  
10 opportunity.

11 Q. Okay. At the very bottom of this  
12 document it's -- I believe, it starts with "DFL."

13 A. Yes.

14 Q. Is that correct?

15 A. Yes.

16 Q. Can you read from the point where it  
17 says "DFL" to the end? It looks like it's cut off  
18 a little bit, but...

19 (Mr. Eyre entered room.)

20 A. Yes. "DFL" -- and that's a reference  
21 to a gentleman named Doug Lyons who worked for  
22 Mr. Routt.

23 Q. Okay.

24 A. He offered his rough overall estimate  
25 to JPH -- again the reference to Jerry Hackman --

1 which he believes is close & suggests we still owe  
2 approximately -- what, there's no approximately --  
3 that we still owe \$4 million in tax plus interest,  
4 but perhaps his number is too high. It did not  
5 consider IRS allowances for self insurance,  
6 workmen's compensation, et cetera.

7 And then, like you say, the last line  
8 is somewhat cut off. It refers to Scripps Howard  
9 borrowing cost.

10 Q. Okay. Now, in this document, when it  
11 talks about we still owe 4 million in tax, can you  
12 tell from this document what year or years that  
13 refers to?

14 A. Well, the earlier part of the document  
15 refers to the years 1985 and '86, so I would think  
16 that that would be the reference to 1985 and '86.

17 Q. Okay. And what was Mr. Lyons'  
18 position with Scripps?

19 A. He was the -- I'm not sure what his  
20 title was at the time, but currently he's the  
21 director of -- director of financial accounting, I  
22 believe is his title. I'm not sure about that.

23 Q. Was he in the tax department at the  
24 time?

25 A. No, he was not in and never has been



1 in the tax department.

2 Q. Okay. Thank you. Okay. I'm going to  
3 show you what's been marked as Government Exhibit  
4 Number 9. If you can take a look at that document  
5 for me please, and tell me if you recognize it?

6 A. Yes, I do recognize this document.

7 Q. Okay. Is this document in your  
8 handwriting?

9 A. Yes, it is.

10 Q. And it's dated December 14th, 1990?

11 A. Yes, ma'am.

12 Q. And did you -- can you tell me what  
13 that document represents?

14 A. This is more discussions of our  
15 attempts to calculate the amount of tax we owed on  
16 this cash to accrual issue for the years 1985 and  
17 '86.

18 Q. Okay. Now, was this recording your  
19 conversation with somebody or just these -- just  
20 your notes?

21 A. Well, these look like -- well, at the  
22 very top of the page it says with "w/JPH," which  
23 would be with Jerry Hackman, so I would guess that  
24 these are my notes after I had a conversation with  
25 Mr. Hackman.

1 (Mr. Eyre left room.)

2 Q. Okay. Great. Okay. I'm now going to  
3 show you what's marked Government Exhibit Number  
4 11.

5 A. Okay.

6 Q. If you can take a look at that  
7 document for me please, and tell me if you  
8 recognize it?

9 A. Okay. Yes, I recognize this document.

10 Q. Is this document in your handwriting?

11 A. Yes, ma'am.

12 (Mr. Eyre entered room.)

13 Q. Can you tell me what it represents?

14 A. It represents conclusions that we made  
15 as to researching whether or not our prepayment  
16 would entitle us to a 1990 tax deduction for the  
17 prepaid interest.

18 Q. Okay. When you say "we," who are you  
19 referring to?

20 A. Okay. Well, I guess "we" again would  
21 be myself, Mr. Hackman, and the document states it  
22 also references Dan Castellini and Mr. John Kron  
23 from Deloitte & Touche.

24 Q. Okay. Great. Thank you. I'm now  
25 going to show you what's been marked as Exhibit

1 Number 12. If you can take a look at that  
2 document for me, please?

3 A. Okay. Yes, I also recognize this  
4 document.

5 Q. Okay. Is that your signature on the  
6 second page?

7 A. Yes, it is.

8 Q. Did you direct this -- draft this  
9 letter?

10 A. Yes, ma'am.

11 Q. And it's dated December 30th, 1994; is  
12 that correct?

13 A. That is correct.

14 Q. Okay. I'd like to refer you to the  
15 second paragraph on page 1, about a quarter of the  
16 way down -- well, before I do that, the letter  
17 indicates that checks totaling \$45 million are  
18 being delivered to Mr. Saewitz; is that correct?

19 A. They went to the IRS. Did they go to  
20 Mr. Saewitz directly?

21 Q. I don't know. The letter is addressed  
22 to Mr. Saewitz, but --

23 A. They either went directly to him or  
24 they were delivered to the Cincinnati Federal  
25 Building.

1 Q. Okay.

2 A. And it's possible that Mr. Saewitz  
3 went with Jerry. Again, I don't remember.

4 Q. Okay. But a check totaling or checks  
5 totaling 45 million did accompany this letter?

6 A. Yes, ma'am.

7 Q. Okay. And then about a quarter of the  
8 way down, the second paragraph, the letter states  
9 "This partial payment is in addition to the  
10 December 31, 1990 partial payment of proposed 1985  
11 tax adjustments of \$2,000,000 and related interest  
12 of \$1,500,000, and proposed 1986 tax adjustments  
13 of \$2,000,000 and related interest of \$1,500,000."  
14 Is that correct?

15 A. Yeah.

16 Q. And then it continues, "This partial  
17 payment also considers amended returns previously  
18 filed by the taxpayer, but not yet acted upon the  
19 by the Service, as well as several additional tax  
20 corrections, for tax years through 1993." Is that  
21 correct?

22 A. That's what it says, yes.

23 Q. And then it goes on to say, "Finally,  
24 it reports and partially pays the proposed 1986  
25 tax assessment as additional 1983 tax, due to our

1 1986 net operating loss." Is that correct?

2 A. Yes, ma'am.

3 Q. Now, can you explain that to me how --  
4 I don't understand what you mean by "It reports  
5 and partially pays the proposed 1986 tax  
6 assessment as additional 1983 tax."

7 A. Our 1986 tax return showed a net loss.

8 Q. Okay.

9 A. Under tax law we can carryback that  
10 tax loss to the third preceding year, which would  
11 have been 1983. And, in fact, that is what we  
12 did. When we filed our 1986 return. We also  
13 filed a Form 1139, which is a carryback form where  
14 we ask the Service to carryback that 1986 tax loss  
15 to reduce the taxable income that we had in 1983,  
16 and to give us a refund for tax related to that  
17 adjustment.

18 Q. Okay. Can you tell from this letter  
19 how much of the 45 million went to this additional  
20 1983 tax?

21 A. On page 2, the \$45 million payment is  
22 broken down by year. So to state how much of the  
23 45 million related to the 1983 year, per the top  
24 of the second page, that would be \$33.5 million.

25 Q. Okay. And that is -- oh, I see. So

1. it would be 13.8 million in tax and 19.7 million  
2 in interest?

3 A. That is correct, yes.

4 Q. Okay. Does that mean that the 1983 tax  
5 liability was increased by 13.8 million?

6 A. From where it was at this point in  
7 time, it went up \$33 million tax and interest.

8 Q. Tax and interest. So from December  
9 30th, 1994?

10 A. Right. That would be after we had  
11 carried back the 1986 loss to the 1983 year.

12 Q. Okay.

13 A. Reducing its taxable income to a  
14 smaller amount, and now we were adjusting this to  
15 that backup for these adjustments.

16 Q. Does that mean the 1986 net operating  
17 loss was reduced?

18 A. Well, during the course of the audit  
19 for 1986 there were several adjustments that  
20 affected that 1986 tax return, and issues that  
21 were related to it. And as the 1986 adjustments  
22 reduced the 1986 tax loss, since we had already  
23 carried back the full amount of the loss on the  
24 original return to 1983, we also had to take those  
25 net adjustments and adjust the adjustment to the

1 1983 year --

2 Q. Okay.

3 A. -- accordingly.

4 Q. Okay.

5 A. Everything has an impact.

6 Q. Okay. So, then, any impact on the '86  
7 return would have affected the '83 return because  
8 that's where it was carried back; is that correct?

9 A. Right, right.

10 Q. Okay. Okay. I'd like to show you  
11 what's been marked as Exhibit 16, if you could  
12 take a look at that document for me, please.

13 A. Okay. I also recognize this document.

14 Q. Okay. Can you tell me what that  
15 document is?

16 A. This is my report to various people in  
17 the accounting areas of corporate office of the  
18 status of where we were in reaching an IRS  
19 settlement in the tax years 1983 through '87, and  
20 also a status on the expected overpayments that we  
21 had made as a result of the prepayments in both  
22 1990 and 1994.

23 Q. Okay. I'd like to refer you to the  
24 fourth paragraph, where it states "Regarding our  
25 overpayment of our expected liability under the



1 settlement, we have confirmed from the IRS and  
2 from obtaining copies of our tax accounts for  
3 years 1983 through 1993, that our \$7,000,000  
4 payment in December 1990 and our \$45,000,000  
5 prepayment in December 1994 were both recorded as  
6 Advance Payments on IRS Examination Tax  
7 Deficiencies, and not as deposits or cash bonds."

8 Is that what it states?

9 A. Yes.

10 Q. Okay. Now, with respect to the  
11 December of 1990 and \$7 million figure, you state  
12 you "Have confirmed from the IRS from obtaining  
13 copies of our tax accounts." When you state "We  
14 have confirmed from the IRS," how did you confirm  
15 from the IRS?

16 A. That would be with discussions that I  
17 had with Mr. Saewitz.

18 Q. Okay. You had specific discussions  
19 with Mr. Saewitz?

20 A. Yes.

21 Q. Do you recall when those discussions  
22 took place?

23 A. I would assume it would be shortly  
24 before the date of this memo, which was March 8th,  
25 1995.

1 Q. Okay. And do you recall the substance  
2 of those discussions?

3 A. Well, when we made the 1994 payment of  
4 \$45 million, we anticipated that was what we owed  
5 in additional tax and interest for all of the  
6 agreed issues.

7 Q. Okay.

8 A. We, in the process of closing those  
9 tax years, and then shortly thereafter, we  
10 realized that we had made a calculation error, we  
11 didn't really owe \$45 million. So I asked  
12 Mr. Saewitz if it was possible, now that we  
13 realized we made an error, to get back the  
14 overpayment portion of that \$45 million, and he  
15 said that no, that was not possible because that  
16 payment was a payment of tax and interest and not  
17 a cash bond and that you can only get back  
18 overpayments to the IRS prior to the closing of a  
19 tax year, if it was a cash bond. And since both  
20 our 1990 and our 1994 payments were paid of tax  
21 and interest and were not payments in the nature  
22 of a cash bond, we could not get back those moneys  
23 now. But when we finally did close those years  
24 and we finally did get the refund for the  
25 overpayments, we would also get interest on those

1 refunds.

2 Q. Okay. Did Mr. Saewitz, specifically,  
3 refer to the December 1990 \$7 million remittance?

4 A. There were several conversations. The  
5 very first conversation was brought about because  
6 we discovered we had overpaid in 1994. But in  
7 subsequent conversations both prepayments were  
8 discussed.

9 Q. Okay. And you, specifically, remember  
10 that today?

11 A. I cannot tell you dates or numbers of  
12 times, but I know we discussed both prepayments as  
13 reflected in this memo.

14 Q. Okay. And did you discuss it with  
15 anyone else from the IRS, other than Mr. Saewitz?

16 A. I would doubt it, probably just with  
17 Mr. Saewitz.

18 Q. Okay. Do you recall how much of the  
19 \$45 million was over paid?

20 A. I don't believe it refers to it in  
21 this memo, but it was -- it was millions. I don't  
22 remember how many millions. It was enough that we  
23 asked if there was any way we can get it back.

24 Q. Do you recall which tax years it  
25 related to?

1           A.     No, I don't. It was -- as you can see  
2     on the previous exhibit, there were 10 or 12 years  
3     involved.

4           Q.     Okay. You also state in this memo  
5     that you confirmed from the IRS and from obtaining  
6     copies of our tax accounts for the years 1983  
7     through years 1993. Is that referring to the  
8     transcript you talked about earlier?

9           A.     As I understand it, there's different  
10    types of transcripts, and over the course of time  
11    we have obtained different types of transcripts  
12    through Mr. Saewitz getting them and then showing  
13    them to us. So I don't know if these sets of  
14    transcripts are the same as the previous  
15    transcripts, but on the transcript it refers to  
16    our prepayments as Advance Payment of Tax  
17    Deficiency.

18          Q.     But this does specify what you are  
19    speaking of here are IRS transcripts?

20          A.     Yes. We obtained them from the IRS,  
21    yes.

22          Q.     Okay.

23                 THE WITNESS: Can we take a short  
24    break?

25                 MS. HALLETT: Absolutely.

1 THE WITNESS: Thanks.

2 (A short recess was had from  
3 10:25-10:32.)

4 Q. Mr. Carroll, I'm going to show you  
5 what's been marked as Exhibit Number 21. If you  
6 can take a look at that document for me, please?

7 A. Yes, I recognize this document.

8 Q. Okay. Is this in your handwriting?

9 A. Yes, it is.

10 Q. Can you tell me what that reflects?

11 A. This also refers to the prepayment of  
12 tax and interest.

13 Q. Okay. And it is dated June 19th,  
14 1996; is that correct?

15 A. That is the date, yes.

16 Q. With respect to the number 2, about a  
17 quarter of the way down the page, can you read  
18 what that says?

19 A. You can't read my writing?

20 Q. An occasional word.

21 A. Regarding 1988 and 1990 prepayments,  
22 Rick -- and I'm trying to determine which Rick I'm  
23 referring to, because I think it must have been  
24 Rick O'Connor, who is an IRS appeals' officer.

25 Q. Okay.

1           A.     Because there was one issue for that  
2     year that we took to appeals, and it was on our  
3     foreign tax credits, which is what number 1 refers  
4     to.

5           Q.     Okay.

6           A.     So I'm not a hundred percent sure, but  
7     I believe when I'm referring to Rick, it is Rick  
8     O'Connor, IRS appeals' officer.

9           Q.     Okay.

10          A.     Rick has been advised, and may bring  
11     it up, that Sid & IRS attorney now feel, unlike  
12     they have said for over one year now, that, one,  
13     we should be entitled to get our money back now as  
14     a cash bond, only problem, it is a joint committee  
15     case.

16                     Two, with interest.

17                     Three, but we can't deduct the  
18     interest in the years paid as no tax interest  
19     liability to tie it to yet. And then I have in  
20     parenthesis "then" -- I'm not sure what that  
21     refers to -- as per the 5701s we now have from Sid  
22     on this, which JPH -- again, reference to Jerry  
23     Hackman -- argued with Sid on, but I've not yet  
24     done with Sid, since Sid helped us do the 1990 and  
25     1994 prepayments as payments of tax not cash

1 bonds, they should be deductible when paid. I  
2 need to point this out. And I guess that last one  
3 is ASAP, as soon as possible.

4 Q. Okay. Now, was this the first time  
5 you learned that they you should be entitled to  
6 get the money back now, referring to June 19th of  
7 1996, I assume?

8 MS. LUTZKO: Objection. You can  
9 answer the question.

10 A. I don't -- I don't know exactly when  
11 the IRS informed us that they were no longer  
12 treating the 1990 payment as a payment of tax and  
13 interest and not as a cash bond. But at some  
14 point in time, after early 1995, we found out that  
15 they were now treating our prepayment as if it was  
16 a cash bond.

17 Q. How did you find out?

18 A. I believe Mr. Saewitz told Jerry  
19 Hackman and myself that.

20 Q. Okay.

21 A. To which we strongly objected because  
22 they had been telling us all along that it was a  
23 payment of tax and not a cash bond.

24 Q. Before this date of June of 1996, had  
25 you asked for the money back?



1 MS. LUTZKO: Objection.

2 A. Which?

3 Q. Any.

4 A. No.

5 Q. Have you -- you hadn't asked?

6 A. I don't know about as far as before  
7 June 1996. Well, let's backup here a minute.  
8 Shortly after we overpaid the 1994 payment, yes,  
9 we went to Sid and we said: We paid you too much  
10 money; 45 million was too much money at the end of  
11 '94. Is there any way we can get it back?

12 And at that point in time he told us  
13 no. Because it was a payment of tax and not a  
14 cash bond, we could not get any of the money back  
15 until these years were closed. But, again, once  
16 we got the money back, we would get it with  
17 interest. The only way you can get the money back  
18 before the years are closed is if it was a payment  
19 of a cash bond, and he told us that these were not  
20 payments of cash bonds. Therefore, we can't get  
21 the money back until the years are closed, but,  
22 again, we would get it with interest.

23 Q. At any point in time did you ask for  
24 the December 31st, 1990 money back?

25 MS. LUTZKO: Objection.

1           A.    I don't think we have asked for it  
2 back. But in the context of discussing both of  
3 the prepayments with Mr. Saewitz, he continued for  
4 a period of time to tell us that, no, we cannot  
5 get the money back because they were not cash bond  
6 payments, they were prepayments of tax.

7           Q.    Okay. Okay. I'll just show you what's  
8 been marked as Exhibit Number 22. If you can take  
9 a look at that document for me, please, tell me if  
10 you recognize it?

11          A.    Okay. I recognize this document.

12          Q.    Is this in your handwriting?

13          A.    Yes, it is.

14          Q.    Can you tell me what that document  
15 represents?

16          A.    It represents my rather lengthy  
17 writing of notes relating to the IRS change in  
18 position on our prepayments, and discusses with --  
19 I believe that it is wrong.

20          Q.    Okay. Which prepayments does this  
21 refer to?

22          A.    Looks like it refers to the 1988, the  
23 1990 and the 1994 prepayments.

24          Q.    Okay. I'd like to refer you to, I  
25 guess it's page 394, is marked at the bottom of

1 the document.

2 A. Okay.

3 Q. Starting at the top of the page, I  
4 believe it says "We will not agree to."

5 A. Yes.

6 Q. Is that correct?

7 A. Yes.

8 Q. Could you read from there down and  
9 tell me where it ends with the letter "B"?

10 A. "We will not agree to: (1), no  
11 interest paid to us on refunds. (A) especially  
12 for the past 1 1/2 years when we (DJC)" -- with  
13 references to Dan Castellini -- "requested our  
14 overpayments to be refunded to us" -- that would  
15 be with regard to the 1994 overpayment, even  
16 though it doesn't say that there.

17 Q. That was going to be my question.  
18 That reference is to the 1994?

19 A. Do you want me to continue?

20 Q. No, that's fine. But is that correct,  
21 that only references the 1994?

22 A. Right.

23 Q. Okay. Answer my question. Okay.  
24 I'm going to hand you two exhibits, Exhibits 33  
25 and 34, and I'm not going to ask you to read

1 anything from them. I just want to know if you  
2 can identify these, and tell me if they are in  
3 your handwriting.

4 MS. LUTZKO: I'm sorry. Number?

5 A. Thirty-three and 34.

6 MS. LUTZKO: Thanks.

7 MR. EYRE: I thought you said you were  
8 going to ask him about the notes.

9 MS. HALLETT: He just identified --

10 MR. EYRE: A handwriting.

11 MS. HALLETT: If that is his  
12 handwriting. He can read.

13 THE WITNESS: I took very long notes.

14 MS. LUTZKO: That is all you want to  
15 know?

16 MS. HALLETT: That's all I want to  
17 know.

18 MS. LUTZKO: If you are comfortable  
19 looking at the pages.

20 THE WITNESS: I can definitely say  
21 that they are my notes.

22 MS. LUTZKO: All pages of them?

23 THE WITNESS: They are rather  
24 voluminous notes. They are all in my  
25 handwriting.

1 BY MS. HALLETT:

2 Q. Okay. That's what? Exhibits 33 and  
3 34?

4 A. That is correct.

5 Q. Okay. Great. Do you want to continue  
6 reading them or --

7 A. If you are not going to ask any  
8 questions, I guess I don't need to.

9 Q. Okay. Okay. This one I do, I'm going  
10 to have a couple of questions on. But I will tell  
11 you it's only really the first portion of it. So  
12 you can read the entire thing if you want, but I  
13 only have a question on really actually the second  
14 full paragraph. It's Exhibit 23. Again, if you  
15 want to read that full thing.

16 MS. LUTZKO: Thanks.

17 A. Okay.

18 Q. Okay. Can you identify this document?

19 A. Yes.

20 Q. Okay. What is it?

21 A. This is a memorandum that I issued to  
22 Dan Castellini or Bert Routt and Doug Lyons.

23 Q. Okay. The second paragraph on page 1,  
24 about two thirds the way down. It says, "After  
25 telling us since 1995."

1 MS. LUTZKO: You see where she is?

2 THE WITNESS: Yes.

3 Q. "That we cannot get a current refund  
4 for any portion of about \$7,000,000 in tax and  
5 about \$7,000,000 in interest that we overpaid.  
6 When we prepaid our expected liability in December  
7 1994 until the case is officially closed, the IRS  
8 is now suggesting we may be able to get some of it  
9 back now. While this sounds good, it is actually  
10 quite disturbing, as they are not changing their  
11 position with regard to the December 1994  
12 prepayment, which caused the overpayment  
13 situation, but they may reclassify our December  
14 1988 and December 1990 prepayments of tax and  
15 interest as cash bond deposits, for which we would  
16 likely receive no interest on if they were to be  
17 refunded. Even more importantly, if we have these  
18 payments refunded to us, we would undo our primary  
19 purpose in making them, to stop accruing of  
20 interest on the additional tax liability that we  
21 knew we owed."

22 Can you explain to me what you mean by  
23 that, if the payments were refunded they would  
24 undo the primary purpose of stopping the accruing  
25 of interest?

1           A.     I'm thinking give us the money. It  
2     would be as if we never ever made the payments.

3           Q.     Are you referring to all of the  
4     payments in that sentence, the December '94, the  
5     December 1988 and December 1990 payments?

6           MS. LUTZKO: Objection, but answer the  
7     question.

8           A.     In going back and rereading that  
9     portion of this paragraph. I believe I was  
10    referring to both the 1990 and the 1994  
11    prepayments, because if they gave us some money  
12    back it would be as if we had never made the  
13    payment, and if it was taken off the record, then  
14    we would not be stopping the running of interest  
15    on taxes that we knew that we owed.

16          Q.     Okay. And okay. So that referred to  
17    the December 1988 and December 1990?

18          A.     No.

19          MS. LUTZKO: Objection. That's not  
20    what he said.

21          A.     No. I said 1990 and 1994.

22          Q.     1990 and 1994. Okay.

23          A.     I believe that's what I'm referring  
24    to.

25          Q.     Okay. Okay. Thank you. The second



1 to last exhibit is Exhibit Number 46. If you can  
2 take a look at that for me, please.

3 MS. LUTZKO: Thanks.

4 A. Okay. I do recognize this document.

5 Q. Okay. Is this in your handwriting?

6 A. Yes, it is.

7 Q. Can you tell me what that document  
8 represents?

9 A. This is notes, again, per a  
10 conversation that I had with Jerry Hackman with  
11 regard to developments in our appeal case on the  
12 interest claim. Mr. Rick O'Connor, the IRS  
13 appeals' officer, was reviewing our claim as to  
14 whether or not we were entitled to interest on the  
15 refund of our 1990 prepayment of tax and interest.

16 Q. Okay. The second page, marked 250 at  
17 the bottom. There are two stars that appear in  
18 the left.

19 A. Yes.

20 Q. Can you read that portion, starting  
21 from there down the page?

22 A. Okay. It says, "I like Rick's point"  
23 -- again, referring to Rick O'Connor, IRS appeals'  
24 officer.

25 Q. Okay.

1           A.     Regarding our filing of a Form 1139 to  
2     carryback the 1986 net operating loss when  
3     originally filed.

4           Q.     Can I stop you? That "C/B" means  
5     carryback?

6           A.     C/B means carryback.

7           Q.     I'm sorry. Go ahead.

8           A.     Not only do you have to read my  
9     handwriting, you have to understand my shorthand,  
10    yes.

11                   To carryback the 1986 net operating  
12    loss when originally filed to earlier tax years,  
13    as Rick indicated this carryback, done prior to  
14    this audit or prepayment, put our 1986 account at  
15    taxable income of 0. So the 1986 RAR, which  
16    stands for revenue agent report, gave our 1986 tax  
17    year a tax liability as 1986 taxable income was  
18    increased.

19                   By this issue, by \$5-6 million and by  
20    all issues by \$3 million, as opposed to IRS's  
21    chief argument that we never had a 1986 tax  
22    liability and we should have known that we would  
23    never have one. Subsequently, this 1986 tax  
24    liability was also carried back to prior tax  
25    years, with the 1986 tax year liability ultimately

1 being 0 after this carryback, but we did have a  
2 1986 tax liability. These revenue agent report  
3 adjustments increased 1986 taxable income. As JPH  
4 -- again reference to Jerry Hackman -- as JPH  
5 points out, the 1986 revenue agent report ends up  
6 with additional taxable income on this accrual  
7 issue of about \$5-6 million, which resulted in a  
8 tax liability of \$2.5 to \$3 million, which is  
9 close to what we decided to prepay in December of  
10 1990.

11 At least in theory, and Rick seems to  
12 agree with us, and with the support of the cases  
13 cited by the IRS, we should be entitled to treat  
14 our December 1990 remittance as a payment of tax  
15 and interest and not as a cash bond. And,  
16 therefore, we should be entitled to interest on  
17 the \$3 million returned to us.

18 while reconciling our number to the  
19 revenue agent report number is problematic, many  
20 revisions/agreements on the various facets of this  
21 accrual method change occurred from December 1990  
22 to the revenue agent report in 1996, it should not  
23 matter if the numbers can be reconciled. It is  
24 only relevant that we had a tax liability, and we  
25 paid a portion of it, and we did not designate it

1 to be a cash bond.

2 Q. Great. Thank you. And, finally, the  
3 very last, I'm going to show you what's been  
4 marked as Government Exhibit 47.

5 MS. LUTZKO: That was an affidavit.

6 MS. HALLETT: That's the affidavit.  
7 Starting at pages marked 253 to 257. If  
8 you could take a look at that document and  
9 identify it for me, please.

10 Q. I'm not going to ask you --

11 A. Are you going to ask me questions  
12 about this?

13 Q No.

14 A. That's fine.

15 Q. Can you identify that document?

16 A. Yes, I can.

17 Q. What is it?

18 A. This is my letter to Rick O'Connor,  
19 the appeals' officer, in 1999, with regard to our  
20 position that the prepayment in 1990 of tax and  
21 interest was a payment of tax and interest and not  
22 a cash bond, and, therefore, we were entitled to  
23 interest when they refunded the money to us.

24 Mr. O'Connor had asked Mr. Hackman and  
25 I to prepare and sign written affidavits attesting

1 to that. And that is what these are.

2 Q. Okay. And that is your signature on  
3 the affidavit?

4 A. Yes. Yes, it is.

5 Q. Okay. And sitting here today, is  
6 everything in that affidavit true and correct to  
7 the best of your knowledge?

8 MS. LUTZKO: Objection. Answer the  
9 question.

10 A. Yes, it is.

11 MS. HALLETT: Okay. Thank you. I  
12 have no further questions. I appreciate  
13 your time.

14 THE WITNESS: Sure.

15 MS. LUTZKO: We are not going to waive  
16 signature.

17 (Deposition concluded at 11:21)

18

19

-----  
Michael W. Carroll

20

21

22

23

24

25

C E R T I F I C A T E

STATE OF OHIO :

: SS

COUNTY OF HAMILTON :

I, Sharlene D. Hall, RPR, the undersigned,  
a duly qualified and commissioned notary public  
within and for the State of Ohio, do hereby  
certify that before the giving of his aforesaid  
deposition, MICHAEL W. CARROLL was by me first  
duly sworn to depose the truth, the whole truth  
and nothing but the truth; that the foregoing is  
the deposition given at said time and place by  
MICHAEL W. CARROLL; that said deposition was taken  
in all respects pursuant to stipulations of  
counsel hereinbefore set forth; that I am neither  
a relative of nor employee of any of their  
counsel, and have no interest whatsoever in the  
result of the action.

IN WITNESS WHEREOF, I hereunto set my hand  
and official seal of office at Cincinnati, Ohio,  
this 16<sup>th</sup> day of January, 2003.

Sharlene D. Hall

My commission expires: Sharlene D. Hall, RPR  
February 1, 2005 Notary public - State  
of Ohio

pc

P

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100 CENTRAL TRAIL WFF  
PO BOX 5380  
CINCINNATI OHIO 45201  
513 977-2862

100 CENTRAL TRAIL WFF  
CORPORATE TAX DIRECTOR



**SCRIPPS  
HOWARD**

December 22, 1988

Mr. Jack R. Elliott  
Case Manager  
Internal Revenue Service  
P. O. Box 476  
Cincinnati, Ohio 45201

re: The E. W. Scripps Company & Subsidiaries  
E.I.N. #34-0517805

Dear Jack:

As we have discussed previously, The E. W. Scripps Company and subsidiaries' desire to post a cash bond with the Internal Revenue Service to in effect prepay and thereby stop the interest accumulation on the 1982-84 adjustments anticipated as a result of our recent settlement with the Internal Revenue Service, which changed our method of reporting from the cash method to the accrual method as of 1980.

This cash bond is being hand-delivered with this authorization letter by our Jerome P. Hackman to your Team Coordinator, George B. Imwalle on Thursday, December 22, 1988, is in the amount of \$9,000,000, and covers the following years now under audit:

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>TOTAL</u>
Tax adjustment	\$3,000,000	\$ 0	\$2,500,000	\$5,500,000
Interest Thereon	<u>2,500,000</u>	<u>0</u>	<u>1,000,000</u>	<u>3,500,000</u>
	\$5,500,000	\$ 0	\$3,500,000	<u>\$9,000,000</u>

Please have the duplicate copy of this letter date-stamped and given to Mr. Hackman as our evidence of the Internal Revenue Service's receipt of this cash bond.

Thank you for your cooperation in this matter.

Sincerely,

*Michael W. Carroll*

MICHAEL W. CARROLL  
Corporate Tax Director

MWC/mah  
Enc. 1 - Letter for receipt purposes

SCRIPPS 00020





1100 FRAL TRUST TOWER  
P.O. BOX 5380  
CINCINNATI, OHIO 45201  
513 977-3862

MICHAEL W. CARROLL  
CORPORATE TAX DIRECTOR



SCRIPPS  
HOWARD

December 31, 1990

Mr. Sidney S. Saewitz  
Internal Revenue Agent  
Internal Revenue Service  
P. O. Box 476  
Cincinnati, Ohio 45201

re: The E. W. Scripps Company & Subsidiaries  
E.I.N. 34-0517805

Dear Sid:

As we have discussed previously, The E. W. Scripps Company and subsidiaries' desire to prepay and thereby stop the interest accumulation on the 1985-86 adjustments anticipated as a result of our previous settlement with the Internal Revenue Service, which changed our publishing affiliates' method of reporting from the cash method to the accrual method as of 1980.

Our check for \$7,000,000 is being hand-delivered with this authorization letter by our Jerome P. Hackman to you today. It covers the following years now under audit:

	<u>1985</u>	<u>1986</u>	<u>TOTAL</u>
Tax Adjustment	\$2,000,000	\$2,000,000	\$4,000,000
Interest Thereon	<u>1,500,000</u>	<u>1,500,000</u>	<u>3,000,000</u>
	\$3,500,000	\$3,500,000	\$7,000,000
	=====	=====	=====

Please have the duplicate copy of this letter date-stamped and given to Mr. Hackman as our evidence of the Internal Revenue Service's receipt of this payment.

Thank you for your cooperation in this matter.

Sincerely,

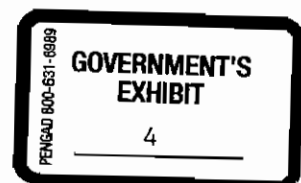
MICHAEL W. CARROLL  
Corporate Tax Director

MWC/mah

Enc. 1 - Letter for receipt purposes

RECEIVED  
EXAMINATION DIVISION

DEC 31 1990



12/10/90

Newspapers Cash to Accrual - 1985-86 Increments

JRR asked if we intended to pay them now  
since interest rate is going up 5%?

I converted his understanding re: interest rates  
the rate remains at 11% thru 1st qtr 1991  
but due to the 1990 Tax Bill  
while interest remains fully deductible  
the rate is increased 2% after  
a Notice of Deficiency is issued

Since the 11% rate is higher, then we can say now  
we will consider prepaying 1985-86 tax now

I asked JIH to give me a rough idea of tax  
still due for 1985 & 86

Per JIH neither we nor IRS have made the tax  
calculation for 1985 & 1986

but we know the accumulative 1980-86 amount  
so he can back out amounts paid for 1982-84  
+ assessed (mostly prepaid) for 1982-84  
to arrive at roughly what we owe for 1985-86.

Once I have it, will consider prepayment with DJC

TSO

12/12/90

Prepay Newspapers 1985-86 Annual increments

DFL asked if we were planning to do so  
since interest jumps up in 1991

I told ~~DFL~~ DFL:

- 1) JPH is currently working on the approximate 1985-86 incremental amounts (total less 1980-84 amt)
- 2) Once we have it, I'll get DJC OK to

prepay in 1990 so:

- a) we get 1990 tax deduction on the interest
- b) we stop the interest

+ rate differential of 11% vs our cost of fund  
which I'm told is less than 11%.

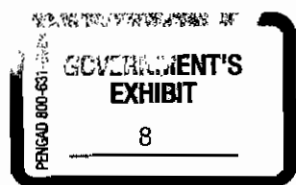
- 3) JRR has also asked (so JRR + DFL must work to prepay)

- 4) As I informed JRR, interest in 1991  
remains at 11%.

only on tax deferrals, when notified  
does the rate go up 2% ~~to~~ to 13%.

- 5) we had been waiting for the IRS calculation  
since we didn't do one specifically for  
1985 + 1986, but since the IRS has not  
given us one yet, good time to consider prepaying.

SCRIPPS 00232



DFL offered his rough overall estimate to JPH, which  
he believed was close + suggests we still owe  $\$4M$  tax  
plus interest, but perhaps his # is too high. It did not  
consider IRS allowances for self-ins, w/c, etc.  
Re: SH Insurance cost - then a... cost. ll. ~ 8 1/2% vs IRS's 11%

TSO  
120X - did we deduct  
2% of self-ins account  
when claim was



12/14/90

IRS Audits  
w/JPH

Pension 1985-87 audit - the auditor says he's finished  
+ told Sid he had no adjustments to propose

Connecticut Summary Reports

He has completed his review

+ is going over corrections with Sid  
who has agreed to make them  
+ resume corrected reports

1985-86 Newspaper - Cash to Accrual Prepayment

He's not been able to complete his calculation  
of the estimated 1985-86 newspaper increments  
due to work on this about this week

For many units a 1-1-87 calculation was not done  
(it was for some) so it must 1st be done so we  
can get 1985-86 by subtracting 1980-81 + 1982-84  
amounts from the 1-1-87 amount

SCRIPPS 00231

I told JPH that DTC also wants to do so by year-end  
after my discussion of it with him to try  
(since we can get the interest deduction in 1990  
+ stop 11% interest to our 8 1/2% borrowing rate)

I suggested that he get DFC's calculation (24M due  
still per DFC recall) + see if it looks reasonably & if so,  
we'll use it for those units without 1-1-87 calculations



2/31/90 Prepayment of 1985+1986 Accrual Income Increments for EWS Cash to Accrual Issue

1980-81- June 1988 agreed to Accrual + pd amt due deducted interest paid

1982-84 - December 1988 pd \$9M Cash bond <sup>(5.5M to 3.5M)</sup> to stop interest, deducted <sup>3.5M</sup> int

July 1989 - Received RAR - Did not protest this issue, but RAR is still at Appeals on other issues

1988+1989 SHI 1120 - Did not deduct accrued interest

1985-86 - how under audit but no 5701 on 40 some yet, but we will agree on issue + just make sure the amt is correct.

- If prepaid on 12/31/90 can we deduct \$3M interest or not  
To meet All Events Test:

1) fixed liability - while no RAR of 5701  
we agreed for 1980-81 + 1982-84 ??

2) can determine amt - Yes

3) economic performance 461(h)

El occurs as interest economically accrues

SCRIPPS 00234

JPH + I reviewed SHI 1120's

1987- Sch M'd Accrued Interest of \$2.6M as still in appeals

1988- Reversed Sch M's on units books since settled 1988's

- Deducted \$3.5M of prepaid interest but did not deduct the year-end accrual of interest remaining, since it relates to contested liabilities

1989 - Did not deduct the increase in the accruals, not settled!

We called John Koon for his interpretation + conclusion of the following:

Question - Does the Accrual of Interest on this  
To Be Agreed To Issue pass the All Events  
Test under Sec. 461, allowing us to  
deduct it yearly, whether paid or not,  
even though we don't have a Notice of  
Deficiency from the IRS for 1985-86 yet?

Conclusion - Which John Koon suggests also  
is it better to pay the \$3M of interest  
today to ensure its 1990 tax deductibility  
rather than assuming its deductibility since  
we are an accrual basis taxpayer. (The answer is  
not clear to JTK either.)

The uncertainty surrounds the 1st test  
Is there an event which fixes our liability?  
We have previously agreed to switch our  
publishing co. to Accrual as of 1980 and  
1985-86 adjustments are needed to complete  
this transaction + once we have the 5701 +  
have verified the amount we will agree to the  
issue + pay the amount due.  
However, as of today we have no 1985-86 Notice  
of Deficiency.

We will follow Rev Rul 89-6 + not call our  
payment a cash bond to ensure its 1990  
deductibility.

12/31/90

Prepayment of 1985-86 tax + interest on  
EWS Cash to Accrual Incentives

To verify our conclusion (although it's not clear)  
that we can't deduct accrued interest  
on these increments unless we have  
a Deficiency Notice + pay the interest

I called John Kwon

He ~~seemed unclear~~<sup>also</sup> as to whether we'd  
pass the 1st prong (a fixed event establishing  
the tax + interest liability)  
since we've not yet received a Notice of Deficiency  
+ researched the issue + called us back

To be ~~sure~~ certain, we should pay it today  
+ follow Rev Rul 89-6 in not calling it  
a cash bond (even though we did call our  
1988 prepayment a cash bond with IRS OK)  
(This was paid before RR 89-6 was issued)

Per RR 70-560 - Accrued interest on an agreed  
proposed tax deficiency is deductible, but  
not if it's being contested

SCRIPPS 00236

He feels we can't partialize the issues + must wait to  
deduct accrued interest until all are settled.



JPH + I then gave our conclusion (+JJK's similar conclusion) to DJC

DJC agreed to pay the full \$7M today especially since the expected ~20% short term bank borrowing rate for today did not materially + in fact is likely to be as low as 7 1/2%.

We gave DPL + JRR the conclusion

By paying by check (SHE check which Sid told JPH was gone) DPL does not have to borrow the money today anyway as he would if it was a wire transfer (so we get 2 days float due to holiday plus low ST rates). JRR prepared the check request, I + DJC signed it, + he carried it to MMC to prepare.

JPH will hand deliver \$7,000,000 check + our Authorization letter to Sid this afternoon + Sid is expecting it.

SCRIPPS 00237

→ \* Clearly doing it this way, per Rev Rul 89-6, our \$3M prepayment of interest is deductible in 1990.

Sid said to JPH that if we pay this interest in 1990 he would allow a 1990 tax deduction for it w/o question



SCRIPPS  
HOWARD

December 30, 1994

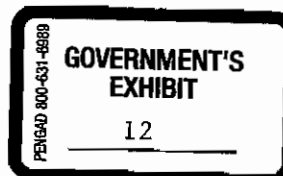
Mr. Sidney S. Saewitz  
Internal Revenue Agent  
Internal Revenue Service  
P. O. Box 476  
Cincinnati, Ohio 45201

re: The E. W. Scripps Company and Subsidiaries  
(current E.I.N. 51-0304972; E.I.N. during  
1983-1987 audit period was 34-0517805)

Dear Sid:

As we have discussed and recently set up with you, The E. W. Scripps Company desires to partially pay the Internal Revenue Service's proposed audit adjustments, as partially agreed to by the taxpayer, for the examinations of The E. W. Scripps Company and Subsidiaries for tax years 1985-1987 and of Telescripps Cable Company (E.I.N. 84-0917187) for partnership tax years 1983-1987.

Our checks totaling \$45,000,000.00 are being hand-delivered today, by our Jerome P. Hackman, to you or your designate at your office, with this letter and completed and signed Forms 870 for years 1983-1990 and Forms 1120-X for years 1991-1993. This is to be considered a partial payment of the proposed tax assessments, and related interest (deductible in 1994), for the audit years and all subsequent tax years through 1993, as a result of this proposed tax assessment. This partial payment is in addition to the December 31, 1990 partial payment of proposed 1985 tax adjustments of \$2,000,000.00 and related interest of \$1,500,000.00, and proposed 1986 tax adjustments of \$2,000,000.00 and related interest of \$1,500,000.00. This partial payment also considers amended returns previously filed by the taxpayer, but not yet acted upon by the Service, as well as several additional tax corrections, for tax years through 1993. Finally, it reports and partially pays the proposed 1986 tax assessment as additional 1983 tax, due to our 1986 net operating loss. Since we received our 1983 tax refund in May 1987 due to the carryback of our 1986 net operating loss, as filed, the proposed 1983 tax adjustment, while increasing our 1983 tax liability, does not incur interest until May 1987.



SCRIPPS 00214



This partial payment of the proposed tax assessments and related interest (deductible in 1994), is as follows:

<u>Tax Year</u>	<u>Tax Payment</u>	<u>Interest</u>	<u>Total</u>
1983	\$13,800,000.00	\$19,700,000.00	\$33,500,000.00
1984	0.00	0.00	0.00
1985	800,000.00	1,800,000.00	2,600,000.00
1986	0.00	0.00	0.00
1987	0.00	0.00	0.00
1988	600,000.00	600,000.00	1,200,000.00
1989	0.00	0.00	0.00
1990	<u>2,300,000.00</u>	<u>1,500,000.00</u>	<u>3,800,000.00</u>
sub-total	\$17,500,000.00	\$23,600,000.00	\$41,100,000.00
1991	1,300,000.00	600,000.00	1,900,000.00
1992	900,000.00	200,000.00	1,100,000.00
1993	<u>800,000.00</u>	<u>100,000.00</u>	<u>900,000.00</u>
totals	\$20,500,000.00	\$24,500,000.00	\$45,000,000.00

Please have the duplicate copy of this letter date-stamped and given to Mr. Hackman as our evidence of the Internal Revenue Service's receipt of this payment and related documents.

Thank you for your cooperation in helping us to make this partial payment in 1994 of the proposed tax assessment and the related interest.

Sincerely,

*Michael W. Carroll*  
Michael W. Carroll

encls. Forms 870 (1983-1990), Forms 1120-X (1991-1993)  
Duplicate copy of letter for receipt

cc: Castellini, Hackman, Stafford, Toomajian  
bcc: JRR, EJW, DPL, DFL, Audit files, 1994 1120 files

SCRIPPS 00215

**Carroll, Mike**

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**From:** Carroll, Mike  
**To:** Routt, Robby; Lyons, Doug; Buckey, David; Holliday, Robbin; Hickok, Lori  
**Cc:** Castellini, Dan; Stafford, Rob; Hackman, Jerome; Zimmerman, Dennis; Green, William  
**Subject:** Status: (1) IRS Settlement/Overpayment, (2) 1994 Tax estimate/overpayment, (3) Sacramento Cable - Tax Refund/Tax planning, (4) 1994 Tax Information - Packets/Ross Reports  
**Date:** Wednesday, March 08, 1995 6:00PM

This E-mail addresses a number of important tax issues that we are currently dealing with. I apologize for its length. I started out over a week ago intending to address each topic in separate awareness memos or e-mails but kept getting interrupted. Since the issues are interrelated, I've decided to put them together on one "status" report and get it out to you.

#### IRS 1983-1987 SETTLEMENT / EXPECTED REFUNDS ON OUR OVERPAYMENTS

Our auditors are back again and working on the few remaining corrections needed to close these audits and on finishing their reports. Progress has been slow due to their lengthy absences since our tentative settlement with them last November. While the foreign tax credit issue regarding UPI's foreign net operating loss carryovers remains in dispute, we agreed to close all other issues and to take this issue to Appeals if necessary. Unfortunately, both our IRS Engineer and Head Agent will be gone again on other assignments after this week until April 3rd. I've requested that they remain on our case once they are back, at least until their reports for these settlements are final so that these years can be officially closed and our overpayment of tax and interest refunded as soon as possible.

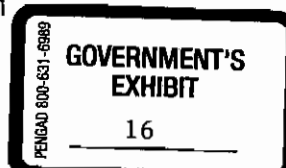
Progress is being made. We now have the final reports for Telescripps Cable and affiliated entities. We previously reviewed and okayed their preliminary adjustments regarding the amortization of Telescripps' acquired intangibles and the Scriptel redemption, so I do not anticipate problems in our review of the final reports. We also have obtained TCI's agreement to accept and sign the settlement with the IRS. Before the Corporate IRS Report can be finished, the IRS Engineer needs to finalize the adjustments required by our acceptance of the IRS National Office's Intangible Assets Settlement Offer on our acquired intangible assets at KNXV, WXYZ, WFTS and Naples, and the related Closing Agreement, which must be signed by both sides. I'm told that he should be able to finish his work soon after he returns. Sid Saewitz indicates that he will be able to devote at least some of the time while he's gone to completing his report as it relates to the other agreed adjustments. We intend to review the final Telescripps' reports, complete an additional analysis requested by the Engineer to assist him in finalizing the WFTS film amortization adjustments, and to work with Sid as we can during this period of their absence to help expedite their completion of their reports as soon as possible upon their return. Sid currently anticipates having his report completed and to us for our review and signature in early May. Once we get the corporate report, it should not take us long to review it.

Regarding our overpayment of our expected liability under the settlement, we have confirmed from the IRS and from obtaining copies of our tax accounts for the years 1983 through 1993 that our \$7,000,000 prepayment in December 1990 and our \$45,000,000 prepayment in December 1994 were both recorded as Advance Payments on IRS Examination Tax Deficiencies, and not as deposits or cash bonds. While this prevents us from obtaining an expedited refund of our overpayment now and we must wait until the Corporate audit report is completed and signed, and perhaps until the IRS Joint Committee also approves it, it does assure us that when we are refunded this overpayment of tax and interest, which should be in the neighborhood of \$12,000,000 to \$15,000,000, we will receive interest from the IRS on it at the current rate of 6.5%, which I'm told exceeds our current borrowing rate. Furthermore, this also assures us that our \$3,000,000 deduction in 1990 for that portion of the 1990 prepayment designated as interest was proper. It also assures us that we will be able to deduct on our 1994 return that portion of the \$24,500,000 of the December 30, 1994 prepayment that we designated as a payment of interest that is actually assessed as interest in the IRS's final report. The \$700,000 refund that we just received is a partial refund of our overpayment that apparently was sent to us now due to an IRS oversight, but we don't expect any additional refunds until the audits are officially closed.

#### 1994 TAX ESTIMATE / EXPECTED OVERPAYMENT / TAX PLANNING

We are currently preparing our company by company estimates of 1994 taxable income and related tax liability for our Form 7004 filing which is due March 15th. While it is too soon to tell yet, I am anticipating that we should be overpaid by several million dollars. This is after the \$4,000,000 "Quickie" refund that we requested in mid-February and which we should be receiving by wire transfer any day now. If it appears that we are overpaid by more than this, we will request another "Quickie" refund.

We decided to play it safe when we made our 4th quarter tax installment payment on December 15, 1994 and paid \$13,600,000 based upon the annualization of September year-to-date estimates of taxable income. We expected a smaller actual tax liability, due to the significant deductions for the December 30th prepayment of interest on our tentative IRS settlement and for the donation of Turner Broadcasting stock worth about \$10,000,000 to The Scripps Howard Foundation, and for taking advantage of the opportunity to defer the reporting of about \$11,400,000 of taxable income until 1995 for Sacramento Cable's anticipated 1995 receipt of the refund of previously overassessed possessory interest property tax liabilities for the years 1988-1995, with interest. We deducted these contested taxes in 1992-1994 when they were billed and paid. Under the annualization method we could not consider these fourth quarter events; however, there was too much uncertainty on December 15th as to the



6/19/96  
2:45

IRS PRE 87 AUDIT - OVERPAY INT  
per Sd to JPH

① He's renewed Jim's convictions w/Ron  
+ now feels as we do  
— we will get all Fgn Tax Credit  
so it's just a timing issue

(2) Ko: 1988 + 1990 Prepayments  
Roch has been advised (+ may buy it up)  
that Sd + IRS Attorney  
now feel (unlike they have said for over 1 yr now)  
1) we SB entitled to get our  
money back now (as a cash bond!)  
(only problem — it is a Joint  
Committee case)  
2) with interest  
3) but we can't deduct the  
interest on the years paid  
as no tax (interest) liability  
to try it to get (them)  
\* as per the 5701's we now have  
from Sd on this  
(which JPH argued w/Sd on)  
but I've not yet done w/Sd  
since Sd helped us do the 1990 +  
1994 prepayments as payment of tax  
not cash bonds — they SB deductible  
when paid. I need to point this out to SAH

7/8/96

IRS 1983-87, '88 + find prepayments / Overpayment  
w/ Srd - 1988-91 IRS Audit 5701

Srd provided me with a copy of Rev Proc 84-58 which he indicated that the IRS Attorney will cite in his written conclusion four soon that:

- 1) our 12/88 and 12/90 prepayments of tax deficiency and interest
- 2) are refundable upon our request  
 (a total reversal of their position until recently that as payments of tax and interest we could not get refunds until the Joint Committee approved our settlements after the other appeals were closed - these years are closed)
- 3) But they are cash bonds not payments of tax + interest

since:

- 1) our 12/88 transmittal says it was a cash bond ?? (even though we indicated it as specific payments of tax + interest + we intended it as such and recall)
- 2) our 12/90 prepayment was mostly for 1986 when with the NOL we had no tax deficiency, was a 5701 regarding the cash to accrual adjustments, which is what we were prepaying as the IRS + we had reviewed the expected

SCRIPPS 00389

GOVERNMENT'S  
EXHIBIT



amount of adjustments + we wanted to stop the interest + get a deduction for it + we even had Sid take our payment to the Fed'l Bldg + Sid filled out the forms so that it would be a payment of a tax deficiency + related deductible interest + not of a cash bond, even though Sid indicated that he had to check the cash bond box on the form.

Per Sid today → since we had no tax deficiency for 1986 + we also had no 5701 yet for the add'l cash to accrual adjustments (+ in fact per Sid they were favorable 5701 adjustments ??) if we had no tax deficiency to prepay so our prepayments can't be for a tax deficiency + deductible interest, but are cash bonds that were never applied to a specific tax deficiency, in 12/94 or ever + they are still sitting unapplied in our accounts (UNFORTUNATELY per Sid) (as I reminded Sid when we determined the amount of our 12/94 prepayment, we considered the 12/88 + 12/90 prepayments as already applied to the specific tax years they were indicated for + then paid the additional amounts of tax + deductible interest (altho we ended and overpaid)

4) and we will not get interest on these cash bonds when refunded for us (although JPH just told me that Ed had told him that we will get interest on these refunds!! - Ed ignored this point + referred back to the fact that we did not have a tax deficiency, when paid or even now, so our prepayments could not be payments of tax and interest, even if intended to be so, + must be cash bonds, which don't accrue interest (as I know, but since we intended them to be payments of tax + interest + specified them as such + Ed helped us to make sure the 12/90 + 12/94 payments were payments of tax + interest + he knew our intent → therefore, we overpaid our tax + now it IRS refunded for us w/ interest → not as a cash bond without interest!)

5) and per his recent 5701

SCRIPPS 00391

as cash bonds  
we can't deduct the prepaid interest when paid, but only when applied + these prepayments are still sitting on our accounts unapplied  
(Ed suggests that we need to correct this unfortunate situation ASAP)

Srd also indicated that the IRS Attorney's conclusion will state that our 12/94 prepayments, since they are payments of tax deficiency and interest can't be refunded now not until the Joint Committee approves our settlement (after all appeals are settled + closed first) + our case can finally be closed

Finally, Srd did indicate that he now has the Tax Court decisions on our 2 Bridgeport appeals but not yet for the Fairfield appeals (as it was apparently slowed by the many limited partners it had to notify)

SCRIPPS 00392

+ as we know + agreed he'd like to wait + calculate the adjustments for all 3 partnership Appeal settlements at once

but he does have a statutory deadline to write up the 2 Bridgeport settlements (of 3/31/97) so he may have to write them up anyway without the Fairfield settlement unless he gets it soon (as the statute can't be extended) also - for 1 of the Bridgeport partnerships he was given the wrong 1987 adjustment + he needs it (its a favorable adjustment in our sale year for prior IRS adjustments



that had not yet reviewed themselves out)  
 Sid asked if WMT had the Tax Court  
decision & if he does, Sid would like to  
 get a copy as he could get the correct  
 1987 STI adjustment quicker from us than  
 from the IRS

I told Sid I'd check w/ WMT:

- 1) on the Budget decision
- 2) on the status of the Fairfield final  
Tax Court decision  
 (which SB may or not done already)

Re: USDC Appeal

We hope (I Sid hope) that we are able to  
 settle it soon with Rich O'Connor.

#### IN CONCLUSION

We will review - Rev Proc 84-58

- on 12/88 + 12/90 prepayment

- transmittals

- research supporting as payments of  
tax deficiency + related  
deductible interest

+ not as cash bonds

- the facts re: actual tax deficiencies  
+ prepayments by tax years

BUT

We will not agree to:

① No Interest Paid to Us on Refunds

Ⓐ especially for the past 1 1/2 years  
when we (OTC) requested our  
overpayments to be refunded to us  
and the IRS refused to do so stating  
that they were payments of tax deficiency  
and interest, and as such, we could  
not get our overpayments back until all  
appeals were settled + closed + the Joint  
Committee approved our settlement and our  
1983-87 case could be closed  
+ now they say we can get them refunded  
as they are cash bonds, but without interest  
THIS IS NOT RIGHT NOR FAIR!

Ⓑ or for the many years that they have been  
holding our money, which was specified  
as payments of tax and interest, and  
not as cash bond (altho the 12/88 payment  
has some exposure on this point)  
+ we thought applied to the tax years as we specified  
Per Sid we may be able to specify (in writing)  
the use of this still unallocated money  
to other years (check this) now, but he's  
not sure how it works (probably not to our benefit!)

② Denial of our 1988 and 1990 interest  
deductions (as they were points of deductible

interest (at least in 12/90 if not 12/88), not cash bonds.

Sid did not expect us to be happy with these developments  
+ we aren't

I will follow WMT (+ then DTC) on all of this  
It keeps getting worse

1st - no deduction when paid

now - no interest on the ~~refunds~~ refunds

- still we can't get the 12/94 overpayments back until the years can be closed

SCRIPPS 00395

(15- Per Sid - originally it was the opinion of Dave \_\_\_\_\_ the Appeals/Etam? Reviewer that we could not get any of our overpayments refunded in early 1995 when we caught our 12/31/94 overpayment error + its only now that the IRS Attorney, after waiting over a year for his conclusions, is taking the position that our 12/88 and 12/90 prepayments were not payments of tax and interest, but were cash bonds, which can be refunded upon our written request, but they bear no interest + our interest paid is not deductible. He does conclude as prepayments of tax, we can't get any of our D/P 12/94 pmts back yet!)

**SCRIPPS  
HOWARD****INTER OFFICE MEMO**

TO:	D. J. Castellini, J. R. Routt, D. F. Lyons	FROM:	M. W. Carroll <i>[Signature]</i>
DATE:	July 9, 1996	SUBJECT:	Mid-year update on the status of significant Federal, State and Local Tax Reporting Issues, Audits, Appeals, Settlements, and Planning Ideas

During the first six months of 1996 our major federal, state and local tax audits and appeals have been proceeding forward. Several matters have been successfully closed while most remain ongoing. Here is where we stand today:

**FEDERAL TAX MATTERS**

1983-1987 Corporate, Telescripps, Tele-Media Settlement - This very favorable overall settlement at the audit-level of all but one of the many disagreed, big-dollar tax issues, including the tax amortization of acquired intangible assets at KNXV, WXYZ, WFTS, Naples and at all Telescripps and Tele-Media cable systems, the tax deduction related to the redemption of TCI from Telescripps, and the incremental cash to accrual adjustments, remains open. Our settlement with the IRS still requires the official approval of the Congressional Joint Committee. While tentative approval has been given, all of our other appeal cases in these years must first be settled, officially closed and then consolidated into our corporate case settlement report before the Joint Committee will give its official approval and the case can be officially closed. We are getting closer, but it has been a slow process. Our case is officially out of Exam now and into Appeals. After some technical difficulties, the Telescripps portion of the overall settlement is now officially closed, as is our Sacramento settlement. The three Connecticut appeal cases are also settled now and are in the process of being closed, which leaves our appeal of the consolidated foreign tax credit limitation adjustments as the one remaining unresolved case. After telling us since early 1995 that we cannot get a current refund for any portion of about \$7,000,000 in tax and about \$7,000,000 in interest that we overpaid when we prepaid our expected liability in December 1994 until the case is officially closed, the IRS is now suggesting that we may be able to get some of it back now. While this sounds good, it actually is quite disturbing as they are not changing their position with regard to the December 1994 prepayment, which caused the overpayment situation, but they may reclassify our December 1988 and December 1990 prepayments of tax and interest as cash bond deposits, for which we would likely receive no interest on if they were to be refunded. Even more importantly, if we have these payments refunded to us, we would undo our primary purpose in making them, to stop the accruing of interest on the additional tax liability that we knew we owed. We will not request that these prepayments



SCRIPPS 00382



be refunded. I am reviewing the facts and hope to convince the IRS that their new position is wrong.

1985-1987 Sacramento Appeal - Our very favorable settlement last fall of all four appealed issues, including the Make Ready cost tax issues, wherein the IRS conceded 87.5% of both the depreciation and investment tax credit portions of this issue to us, is now officially closed and incorporated into our Corporate 1985-1987 RAR. This is so even though River City has never signed off on the settlement, at least to my knowledge.

1984-1987 Bridgeport and Fairfield, Connecticut Cable Partnerships Appeals - All three of these cases are now settled. The Bridgeport adjustments should be incorporated into our Corporate RAR soon, and hopefully the Fairfield adjustments will be available soon also. The net result of all three settlements is a refund of about \$200,000.

1983-1987 Foreign Tax Credit Limitation (UPI's OFL) Appeal - After waiting nine months just to be assigned an Appeals Officer, and another two months to meet with him, we had our first meeting on June 20th. While he indicated that he will not concede the issue, I am optimistic that we will reach a favorable settlement of the issue soon. When combined with corrections to our consolidated foreign source income for years 1988-1993 which will significantly increase our yearly credit limitations, even a 50-50 settlement of the issue makes it just a timing (interest) issue. We have analyzed various settlement options, and project our pre-tax cost to settle will be between \$100,000-700,000, with all foreign tax credits fully utilized. Our next Appeals meeting is July 23rd.

1988-1991 Audit - This audit has gone relatively smooth so far. We are keeping current with their IDR's and only a handful of their 80 requests are outstanding. We hope to hold them to their targeted April 1997 completion date. There are few proposed adjustments so far, including a favorable allowance of an additional \$245,000 of accrued bonuses being deductible in 1991 instead of 1992, and carryforward adjustments for the Sacramento partnership settlement and a small adjustment to our 1989 gain on the sale of our Mile Hi Partnership interest. They are also proposing to defer our deductions in 1988 and 1990 for the prepaid interest that we paid then. As mentioned above, I hope to get these dropped by convincing them that these prepayments were not deposits of the nature of cash bonds, but rather payments of tax and related interest as we intended and designated when we paid them. Sid even helped us make the 1990 payment in this manner. They are also considering a one-time permanent capitalization of the supplies kept on our Cable division trucks. We also expect adjustments related to the intangible assets acquired at WMAR-TV and for several smaller 1988-1991 acquisitions, and they may revisit the Evansville intangible assets again but only as of 1988. They are reviewing the several large settlement payments made in Sacramento and also Knoxville's JOA termination payments, but believe that our current deductions for each of these payments are well supported. We expect them to once again look closely at the transitional investment tax credits claimed through 1990 for the Sacramento additions, but I do not anticipate a big adjustment, if any. We expect them to focus more on specific accrued liabilities and general tax issues this cycle than they have previously. The Computer Audit Specialist

reviewed and approved our conversion of the transaction tapes into our current format and is performing audit procedures using them. A financial products agent was brought in and he agrees with how we reported our investments. He will come back, but just to review the Yen loan loss with the International Tax Auditor. The International agent has been reviewing the corrections to our 1988-1991 foreign source income calculations and is generally in agreement with them and with our foreign tax credit limitation calculations, although he may propose some minor adjustments regarding indirect foreign expense allocations. He is also awaiting the outcome of our appeal regarding whether UPI's foreign NOL carryover stays in our group or not. I expect him to follow how it is settled for these years also and hopefully our settlement will not even carryover to this period. So far they have not followed through on the supposedly IRS national office mandated Newspaper Carrier Compliance Check that they indicated would be done to make sure that we were consistently filing Form 1099's for all of our independent contractors. Since we also prepaid the anticipated 1988-1991 impact of our 1983-1987 overall IRS settlement in December 1994, and also included several necessary corrections to the returns as filed, there should be little additional tax due when this audit is completed.

1992-1995 Tax Return issues - Our December 1994 prepayment on the 1983-1987 settlement also prepaid most of the settlement's impact on these years and it considered several corrections to these returns as filed. As mentioned in my January 19, 1996 status memo there are a number of issues in these years that we expect the IRS will review closely, including our gain on the sale of The Pittsburgh Press, UFS's 1992 artwork donation deduction, the Section 1071 deferred gain from the sale of WMC, the timing of our deductions for the overassessed Sacramento possessory interest property taxes, our tax treatment of Scripps Howard Productions and HGTV "start-up" costs, deductions for donations of appreciated stock to Scripps Howard Foundation, our 1994 deduction of prepaid IRS interest (in excess of the amount owed), our foreign tax credit calculations, and more.

Independent Contractor vs. Employee Classification cases - Both our San Luis Obispo buy-sell carrier case and our Cincinnati Post stringer cases are awaiting rulings regarding their eligibility for Section 530 safe harbor protection. We will vigorously fight the San Luis Obispo adverse ruling if we are not granted relief as the IRS Ruling ignored the true facts, the buy-sell carriers' financial risk, and even more importantly the specific statutory exemptions that exclude buy-sell carriers from treatment as employees. Ours is the first adverse buy-sell case although several others are now progressing. We still have no opinion from Colorado on their review of our carriers and drivers there. The NAA Taxation Committee's Task Force on Independent Contractor Issues has been considering the best solution to the more frequent challenges now coming from the IRS. What may be the best solution to our problem is the "Direct Seller's" provision included in the Small Business Protection Act passed today by the Senate, which will now go to a Conference Committee to iron out its differences with a similar previously passed bill in the House. This provision puts specific language directly into the statutes that qualifying newspaper distributors are to be treated as independent contractors.



Tax Planning - Other than the tax provisions attached to the Small Business Protection Act, which if passed as is and signed into law, could "cure" our independent contractor problems with the IRS, and it would also extend the tax benefits from Employer Provided Educational Assistance Programs and the tax credits for research costs and new hiring costs, I do not expect any significant tax changes this year due to the upcoming Presidential elections. Any capital gains tax rate reduction will not likely be seriously reconsidered until next year, when Tax Reform will be debated once again. We still need a fix to the UMKK royalty problem in order to permanently solve our foreign tax credit limitation problems. While a favorable IRS Appeals settlement on the UPI foreign NOL carryover issue and the corrections to the 1988-1993 foreign source income calculations should solve our tax credit problems through 1994, they do not cure the basic problem of leaving too much of the profits in UMKK to be taxed at the high Japanese tax rates.

## STATE TAX MATTERS

Lake County Property Taxes - Our Fifth District Court of Appeals victory in our 1989-1992 case has been appealed as expected by the County and Gaylord Wood. A rehearing has been refused by the Court of Appeals but there is a reasonably good chance that it will be heard by the Florida Supreme Court. Recently we filed our Answer Brief and the Florida Cable Association filed an Amicus Brief on our behalf. We expect to win an affirmation if the case is heard, which would set judicial precedent on this issue in the State of Florida and possibly throughout the county on the proper valuation method that must be used when assessing cable assets for personal property tax purposes. Our 1993-1995 cases remain on-hold pending the outcome of this case.

New York City UFS/UPI 1981-1982 Combined Return Appeal - We were shocked when the Administrative Law Judge rendered an unfavorable decision in this very old case. We have now hired prominent, New York City tax attorneys to help us win or favorably settle this case. We have filed our Appeal Exception and Legal Brief. While our attorneys tell us that we should win this case, since there is no certainty of victory especially as we are trying to get a reversal decision they have recommended that we try once more to achieve a pre-trial settlement with the City, which is where we now stand. We have authorized our attorney to offer a 50-50 settlement, but no more, to resolve this case or we will go to Court. With 15 years of interest, the dollars involved are now about \$2,800,000.

Sacramento Property Taxes - We decided not to pursue the bifurcated Possessory Interest valuation cases, since our chances to get our annual \$400,000 possessory interest tax reduced further were not strong, and to properly prepare the cases for trial would be costly. Doug Mo agreed with our decision, and he is currently trying to wrap up getting the erroneously assessed 1993 personal property tax penalty of \$90,000 refunded to us. While we successfully appealed and overturned the County's 1988 revaluation of our possessory interest and received all of the \$10,400,000 in overassessed taxes back with \$950,000 of interest, when the system is transferred to Comcast it will be subjected to a proper revaluation of its possessory interest due to the change in ownership following the

Proposition 13 statute in California. However Doug Mo has commented that the increased tax should not be anywhere near what the County tried to force on us. Regardless, it is Comcast's tax problem, not ours.

Ohio Franchise Tax Appeals, Audits, Issues - Our 1990-1991 Appeal remains open. The primary issue is whether Ohio can tax, through apportionment, our 1989 gain on the sale of our Mile Hi partnership interest, which is an intangible asset. This is a controversial issue in Ohio and our aim is to achieve a fair settlement on this \$1,000,000 issue, as the statute is against us but we know the state is settling these issues with other taxpayers. We have a similar issue on the 1994 return regarding the 1993 sales of WVRT, KUPL and Pharos/World Almanac. The 1992-1993 audit has proceeding slowly but the auditor appears to be allowing us to exclude 90% of all foreign source revenues under the new rules that became effective in 1992 despite our prior audit battles on this issue and despite the fact that UFS's directly related expenses to generate these foreign revenues are close to 50% due to the royalty payments to authors/creators. If the 90% exclusion is allowed, we will continue to enjoy a huge annual tax savings as it shelters much of our Ohio combined income.

Pennsylvania Franchise tax - We have now received a check for about \$54,000 from the state, which represents the interest owed to Scripps Howard, Inc. on the 1988-1989 franchise tax refunds totaling \$435,000 that we won last year. This case is now closed.

Florida - Following through on our success last year in settling WPTV's sales factor to only include 50% of its national and network advertising revenues instead of 100%, we have also settled the 1988-1993 tax years also using the same 50% national and network advertising sales factor. This is saving us \$190,000 in additional tax for these audit years plus the related interest on this assessment. This case should be closed in July.

Ohio Sales and Use Tax Appeals - Our Scripps Howard, Inc. case has now been closed with the State allowing Cincinnati Post the printer's exemption and dropping a \$6,000 penalty from our assessment. Scripps Howard Broadcasting's case remains open, although with the recent Ohio Supreme Court decision that upheld the favorable WBNS decision that Nielsen and Arbitron rating services are exempt from the Ohio sales tax, our only open issue, our case should be successfully closed very soon.

Indiana - The auditor returned to wrap up his audit of Evansville's 1990-1992 returns. He is allowing our sizable enterprise zone tax credits, with just minor adjustments. This case should be closed soon.

Arizona - Dennis assisted Robby in successfully reducing the proposed assessment on the sales tax audit of Hall Systems.

Upcoming Unitary Reporting Audits - Both California and Colorado have scheduled audits this year. While California is auditing John P. Scripps Newspapers returns for 1992-1994, we expect the auditor to look closely at trying to force us onto a unitary filing.

SCRIPPS 00386

Dennis and I have prepared for this and we hope to be able to convince him that the State will not benefit from such an effort. This audit begins next Monday, July 15th. Colorado has been very vocal the past few years, sending us Unitary Reporting Questionnaires, and now telling us upfront that when they come here in October to do their 1988-1994 audit of Denver, their intention is to try to put us on a unitary filing there. My concern is that they have nothing to lose by assessing us on a unitary basis since Denver has not been paying Colorado income taxes since prior to 1988 due to its losses. Since Denver is our biggest newspaper as has high amounts of property, payroll and sales in comparison to our other newspapers, if it is combined with the other newspapers in a Colorado unitary return, we could owe as much as \$2,000,000 a year in Colorado tax on the combined taxable income with a relatively high Colorado apportionment factor. While we have been successful in past years in avoiding unitary reporting threats in California, Arizona, Illinois and elsewhere, this remains a serious and a growing concern, especially now that the units do less of their own administrative work with the start-up of the Shared Financial Services Department here in Corporate Office. Our argument that the units handle their own day to day activities and decision-making with only limited oversight from Corporate Office is not as strong as it once was. We intentionally postponed the Colorado audit from May until October so that we can deal with the California audit first, as we have a stronger set of facts in California to defend our position that our units should file separate returns there. Hopefully a successful defense against California will help us to overcome the expected Colorado attack. We are also concerned that our exposure to unitary reporting challenges is being increased as several of our new businesses (HGTV, UFS contracts, Scripps Howard Productions, etc.) are expanding their activities into more states, creating state income tax nexus and new state filing requirements. Also the use of Scripps Howard Publishing, Inc. as a catch-all for special payrolls and investments gives us concern.

State Tax Saving Opportunities - We have analyzed the best way to handle intercompany notes receivable from non-cable subsidiaries after the Cable Division is sold. Although it is desired to no longer maintain a parent Delaware holding company, there are several more beneficial ways to deal with this intercompany debt than putting it into our new parent, Scripps Howard, Inc. and letting Ohio tax a portion of it. If we put the non-cable notes into WXYZ, since the Michigan Single Business Tax would not tax the interest income, just as Delaware does not, we could save perhaps \$300,000 annually. Another possibility would be to set up a Delaware financing subsidiary (this would not be a parent holding company like we have now) or perhaps a Nevada subsidiary as Nevada has no corporate income tax. While the state income tax savings from having a Delaware passive holding company will be much less after the cable division is gone, there still is significant tax savings potential available. Several restructuring recommendations also remain available for implementation, such as combining the three New Mexico entities into just one entity, but over several years so as not to lose any NOL carryovers, while achieving the tax benefit of a lower current New Mexico Income Tax on the combined taxable incomes of these entities by being able to currently utilize the NOL's of CH and BCH to offset New Mexico State Tribune's taxable income. In the fall we will again analyze the benefits of these and other state tax savings opportunities if we were to restructure our legal entities in different configurations. Previously we analyzed merging the

Entertainment Division entities together, but for now the HGTV start-up losses provide the greatest tax savings to us by keeping them as a division of Scripps Howard Broadcasting Company, where they shelter its taxable income and reduce its state taxes by a sizable amount. If we are unable to overcome the Colorado unitary reporting threat, we will want look very closely as to if a restructuring of our entities can reduce our overall state tax liability in such a taxing environment. We may even have to reconsider our position on state unitary reporting. We continue to look for and to consider other ways to minimize state taxes for all entities.

cc: Stafford, Hackman, Zimmerman, Green

SCRIPPS 00388



1/30/98

Re: 1988-1991 IRS Audit Settlement  
 & Possibly Snafu due to our intended 1983-87  
 Claim for interest on 'Cash Bond' monies refunded to us

I've wanted since talking to him on Tuesday pm (1/27/98)  
to hear from Will Jackson (altho he was at a 2 day  
 Managers' mty until today.

12:44 VM - from Will Jackson - Call him 684-2328  
 (I was out at lunch)

1:30 VM to Will - Returning his call. I'm back from lunch

2:07 VM - from Will - Call him at 684-2462

2:30 I called 684-2462 Rob w/ Estate tax answered  
 He tried to connect me to Will at 684-2328  
 then put me into his VM

SCRIPPS 00399

So I left Will another VM.

3:10 VM - from Will. Call him at 684-2462  
 (while on another call)

(3:25 Rob met w/ me & also w/ DEZ until 4:10 re: a)  
 call from FOOD NETWORK VP of finance)

4:20 I called 684-2462 & this time a lady in but I  
 answered. She also transferred me to 684-2328  
 when Will did not answer (per JPH he usually  
 leaves at 3:45) I left him another VM  
 when he called back I was in a mty & just got  
 out of it 5 minutes ago. If he's still there, call  
 me as I'll be in awhile. Otherwise call me next week

4:45

Called to advise DEC that Will & I played phone tag  
 all afternoon so I have not yet discussed it with him (Cmp int  
 with him  
 in message)

2/2/98

10AM

w/ DJC - Will has not called me yet this morning.  
We played phone tag Friday afternoon.

11:48

VM from Will. Call him at 684-2462

1:45

I returned his call & was told he was not available.  
I told receptionist that I was returning his call & that  
he could call me when he is available.

2:32

VM from Will. Call him at 684-2328

3:35

I was ready to call Will again (but if he's getting ready  
to go home at 3:45 this is not a good time to call him.  
I'll call him later & leave him a VM so it's again up to him  
to call me in the tomorrow.

4:35

I left another VM for Will. Returning your call. Call me

3/98

8:25

VM from Will. He does need to talk to me. He's out of his office  
until about 11AM. Call him between 11:00-11:30 <sup>at</sup> 684-2328

11:20

I called & Will answered.

We discussed the matter of whether the "rumors"  
were true that we intend to file a Claim for Add'l  
Interest on the Cash Bond monies from (12/90) that were  
refunded to us in 1997 without interest?  
Since, we always have & now that we have 1988-1991  
settled they agreed to treat these payments  
both the 1988 and 1990 pymts, as prepayments of  
tax and deductible interest and not to treat  
them as cash bond payments, we SB entitled to  
interest on the refund of these payments.



will - This issue of interest on the Cash bonds was never brought up in the mtg

MWC - No, it was not specifically addressed  
~~that~~ it was not a 1988-91 Audit issue  
 + we were negotiating a settlement of all of the 1988-91 Audit issues

will - He agrees we were + deal

MWC - We feel that at that meeting (on 1/22/98) we settled all 1988-1991 Audit issues with the IRS, in good faith, + that both sides should now abide by our agent. The matter of our 1983-87 Claim for interest on the "Cash Bond" monies returned to us ~~was~~ is not a new issue

was it a 1988-1991 Audit issue  
 The IRS was aware that we were planning to file a Claim for this interest  
 we have always said that the 12/90 payments were intended to be and were supposed to be prepayment of tax and deductibly interest and not cash bonds  
 + we argued this ever since I'd raised the issue several years ago

While we considered the benefit of our getting this interest in settling the 1988-91 issues with you, it is not a 1988-91 issue + our 1988-91 Settlement S/B abided to by both sides

will agree that both sides reached an agreement on all 1988-1991 issues  
 & they will follow it & close the case

but they only dropped the (\$701 #2) issue  
"to get the case closed"  
"They never retracted their position  
that these are cash bond payments"

★ ★ They will abide by the agreement  
& close the 1988-91 case as we agreed.

★ ★ If we want to file a Claim for Interest  
on these Cash Bond monies refunded to us  
Go ahead and file the Claim  
When they receive it  
They will disallow it  
as it is still their position that  
these were cash bond payments  
& we are not entitled to interest on them

★ ★ & then will have to take my Claim  
to Appeals  
 This is what we've been planning to do all along  
 If they deny it, we will take it to Appeals  
 but I'd hope that they'd agree to it  
~~as it is still their position~~ since will offered & I clamped  
 with him what he was offering and then  
 we accepted to treat these payments

not as cash bond payment  
but as prepayment of Tax and interest  
in settling the issue & all of the other  
1988-1991 audit issues  
so the 1990 payment should also be  
treated in the same manner regarding  
our bc entitled to interest on the portion  
of our 1983-87 refund that was a return  
of monies that ~~we~~ were deemed by the IRS  
to be cash bond pymts & refunded but  
with no interest

will disagree & again said  
Go ahead & file the Claim  
& he will deny it

SCRIPPS 00403

I again said that's what we will do  
& I hope that they approve the claim  
but if not, we will take it to Appeals

I also then decided to at least suggest to  
him that we would listen to him if he would  
prefer to waive his interest on the benefit of the  
interest by receiving the settlement on return  
for us agreeing not to file the Claim for Interest

So  
I said that after Pete had called me  
last Tuesday & suggested that if we

intended to file this Claim that we no longer had a deal settling all the 1988-91

issue  
I made DJC aware of this situation  
+ DJC agreed

We struck a deal with the IRS  
settling all 1988-1991 issues  
+ both sides should abide by it  
but he suggested

to me that

since we based our acceptance

of Will's offer

looking at our NET COST to

settle all of the issues as he offered

+ considered the benefits of this

Interest in determining our NET COST

if Will would prefer to redo some

of our agreement if we would agree

not to file the Claim for the Interest

we would be willing to listen to any

such proposal from Will

that would make us whole for the

benefit of the Interest we'd give up

by not filing the Claim

SCRIPPS 00404

(\*\*)

Will - Said (NO WAY) - The (1988-91) Agreement  
will not be revised now

(\*\*\*)

The IRS will close 1988-91 as we agreed



★ ★  
 + if we want to file the Claim - go ahead  
+ they will disallow it when they get it

★ ★ ★  
 OK that's what we will do (as we had intended  
 to do before Pete raised this matter last Tuesday;  
 (I expected this response from Will)  
 (but at least let him know that we  
are willing to drop the Claim if he  
would make us whole for dropping it)

- This ended our conversation  
so unless Will calls me back to  
(discuss how to make us whole  
if we'd agree not to file the Claim)

- The 1988-9 Settlement as agreed on 1/22/98  
will remain in place  
+ they will close the case following it

- If we file a Claim for interest on the  
12400 pmts refunded to us as "cash bond"  
money not entitled to interest  
Will intends to deny it  
+ we can take it to Appeals  
(as I told him we will if he  
does not allow it)

11:40

I then provided RBS with these conclusions  
 (JPH was at his doctor app<sup>'t</sup>)  
 so I'll fill him in later

11:45

I met w/ DTC & filled him in <sup>① Will will abide by our '88-91 Agmt</sup>  
<sup>② If we file the claim, he will deny it</sup>  
 DTC believes that Will's actions since we  
 agreed to settle all the (1988-1991) issues  
 on 1/22/98  
 have probably tried his hands to  
 abide by our Agreement.

DTC asked if I mentioned to Will that  
 we were willing to listen if he preferred  
 to make us whole on our net benefit from  
 the interest by reversing the 1988-1991  
 settlement if we agreed not to file the claim

I did, after we did discussed the IRS's  
 concern over our intent to file the claim  
 for interest on the 1990 prepayment  
 monies that were refunded to us in  
 1997 as cash bond monies without

interest  
 + that he had

SCRIPPS 00406

- ① Agreed to abide by our 1988-1991 Agreement  
 on 1/22/98 to settle all 1988-1991 Audit  
 & monies as we did
- ② Told me to go ahead & file the claim, but



when he gets it he will deny it + we'll have to take to Appeals, as it is still their position that these payments in 1988 and 1990 are cash bond payments + they only agreed to drop the 1988-1991 audit issue of when they are deductible to get the 1988-1991 case agreed + closed. They were not agreeing that these payments were prepayment of tax + interest for any other purpose, as they ~~still~~ position is still that these were cash bond payments.

I feel with the IRS's agreement (on 1/22/98) with us

- to treat the prepayments for the 1988-91 audit settlement (even if not for any other purpose ???) as if: prepayments of tax and deductible interest and NOT as cash bond payments
- by allowing these prepaid interest portion of these prepayments to be deductible in the year paid (as if prepaid interest and not as cash bonds in which case the interest is not deductible until the tax year is closed)

We S/B strong in the issue if we must take our claim for interest to Appeals plus for the 12/90 prepayment, the IRS knows that our intent and effort, with S/B to keep us to do it right, were for these to be prepayments of

tax and deductible interest, and not cash bonds  
 (+ it is only the prepayment, not the 12/88 prepayment,  
that is now at issue regarding the Claim)  
 (although we still must overcome the hurdle of  
proving that the IRS posted it incorrectly.)

(\*) Since the issue was put onto a 5701 (#2)  
 they must explain why they are dropping it  
 in their final report  
 although OSC + I both expect them  
 to (now) be very careful in what they  
 put into their report  
 knowing that we intend to file the Claim  
 so they probably won't say much  
 + what they do put in it will suggest  
 that they did not agree that those prepayments  
 were prepayments of tax and deductible interest  
 instead of cash bond payments  
 but they still consider them to be cash bond  
payments, and only agreed to drop the issue  
 + to allow us to deduct the prepaid interest  
 in 1988 (vs 1991) and in 1990 (vs 1997)  
 to get the 1988-91 case agreed and closed.

SCRIPPS 00408

\*) But I feel this SBA weak position  
 How can they allow our interest deductions  
 as if prepaid interest, yet deny us interest  
 on the refund of those prepayments?

However, since Will (at least presently)  
 is not considering  
 to renew the 1988-91 settlement (to make us whole  
 in exchange for us agreeing not to file  
 the Claim  
we are left  
with

Filing the Claim for the interest  
and risking  
if the IRS did pay us too much interest  
with the 9/97 refund  
this overpayment of interest being  
detected and corrected  
to our detriment

As I am intending to do, and as we have  
discussed over the past year, DJC said:

- (\*) Before we file our Claim for the interest  
 we need to review/analyze the refund details  
↓ 1st determination if we got too much interest  
with it  
we have 1 year from its receipt (9/97) to file  
our claim  
so we have plenty of time to carefully  
review it → we will  
we have not yet reviewed it  
as JPH + I were giving top priority

SCRIPPS 00409

to closing the 1988-91 Audit, completing IDP's,  
& settling the issues, esp the SCT issues,  
as we have successfully now done

So, now I intend to soon have the  
refund analyzed very carefully  
(before we file our claim)

1st - by JPH (using new Interest Calc. software  
we just got)

2nd - by MWC

3rd - by D+T, IRS Interest Group

AND - If we are entitled to all interest we  
 received, we should go ahead & file  
 the claim

BUT - If we believe that we received too much  
interest, we will have to weigh  
the benefit vs the risk  
of filing the claim

SCRIPPS 00416

2pm late w/JPH - The 1988-91 Settlement will stand AS IS  
 - will intend to disallow our claim if filed  
saying it is still their position that they were  
cash bond payors (but if we file, we're stuck  
with how they agreed to settle the issue for 1988-91)



So JPH's IRS priorities are:

- (1) Close 1997 Forms (2001) with Rob  
with needed IRS Settlement changes
- (2) Work with Ed, Pete & Wayne  
to finalize the Agreed It's ASAP
- (3) Then closely analyze the 9/97  
Refund & Interest Calculations  
(using the Denney Interest Software)  
to evaluate if we received the  
correct amount of refund and  
interest on the refund (except re:  
the return of the deemed cash bond  
monies \$3.5M in 1986, + 491,475 in 1985)  
(They'll review it  
+ then we'll have D+T analyze it)  
(After all of this review, we will  
decide w/OTC if to file the  
Claim or forego it)

(PS - He will also need to do the 2004  
calculations for its 3/15/98 filing)



## SCRIPPS

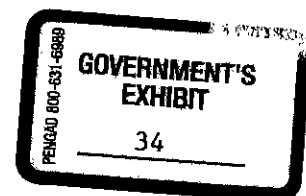
On JANUARY 22ND

- Fast Thursday we settled all 1988-1991  
Audit issues with you, bargaining in  
good faith. Both sides should abide  
by our agreement.

Regarding our 1983-87 Interest Claim for Refund  
- This is not a new issue, nor is it a  
1988-91 audit issue. It is an outstanding  
matter from the previous 1983-87 cases, +  
the IRS was aware that we were planning  
to file a claim for interest on the "cash bond"  
monies that were refunded to us without  
any interest in Sept.

After Pete called me about this on Tuesday  
I made DJC aware of this "problem." He  
also feels "A Deal Is A Deal" but he said  
since we based our acceptance of your settlement  
offer on our TOTAL NET COST of all the issues,  
including the benefit of getting the interest,  
we are willing to listen if you would

prefer to restructure our deal  
so that we come out with the same  
overall net cost but don't file the  
Claim for the Interest



SCRIPPS 00412



any interest in E, I.

After Pete called me about this on Tuesday  
I made DJC aware of this "problem." He  
also feels "A Deal Is A Deal" but he said  
since we based our acceptance of your settlement  
offer on our TOTAL NET COST of all the issues,  
including the benefit of getting the interest,  
we are willing to listen if you would

prefer to ~~restructure~~ restructure our deal  
so that we come out with the same  
overall net cost but don't file the  
claim for the interest

In that regard I've analyzed various  
issues & how they could be used to  
accomplish this.

- Give it some thought & call me next week.

IRS Issues - Agreed 1988-91 Settlement  
Add'l Interest on 1983-87 Refund

Points to discuss w/ Will to get Settled (AGAIN?)

We committed to a settlement of all 1988-1991 audit issues + both sides should abide by it. The matter of whether we are entitled to interest on the 12/80 pymts that were refunded to us was a known open issue, which we have argued w/ IRS + with Sid about ever since he raised it, but it is not a part of the 1988-91 Exam or its settlement, just related to it in that how we settled the treatment of this payment, as a cash bond or as a pymt of tax and deductible interest, also determines it. It is not a new issue.

Will offered to concede the issue now overall, 1988-91 Settlement + I had him clarify what he meant and then I repeated to him what I heard him to say, that both the 1988 and the 1990 payments would be treated as prepayments of tax deficiency + deductible interest, and they would not be treated as cash bond payments + I agreed that this would be their treatment.

You can't say this applies to the interest deductions but does not also apply to their treatment for purposes of getting interest on those amounts that were refunded. Whether or not Will considered this in making his offer, he should live by his agreement.

After Pete brought up this matter earlier this week  
 Depshew/DJC. + while we feel that the deal  
5/B followed + that we are also now clearly  
entitled to the add'l interest on these monies  
 - now we based our settlement looking at the  
total \$'s, we are willing to listen if he  
would prefer to substitute concessions on the  
other issues in return for our agreement  
not to file a claim for this add'l interest  
so that we still end up settling at the same  
overall net cost to us

SCRIPPS 00415

Net cost of various issues  $\rightarrow$  AS ARISED, CHANGED

$$-\text{on } \$3.5\text{M}('86) + \$491,475('85) \rightarrow \$2,440,000 \text{ Gross}$$

$$\sim (1,600,000) \text{ NET}$$

So will be giving up  $\$2,440,000$  of interest, or 6M NET

Several ways to make us whole in NET \$-

GROSS  
COST

NET  
COST

1988-1991 Settled Issues

SCT - Settlement Points

- We Agreed to 100% of 20M over 8 yrs	Int = 4.2M	<u>2.8M</u>
- if 50% = 10M over 8 yrs	2.1	~ 1.4 <u>↓ 0.7</u>
- if 75% = 15M over 8	3.2	~ 2.1 <u>↓ 0.7</u>

SCT - ITC

- We agreed to put up 1,150,000 in '89-90	TAX 1.15M	1.15
	INT 1.2	0.8
less depre on 1,150,000	TAX (0.4)	(0.4)
	INT (2.0)	(0.4)
		<u>1.4M</u>
- if Δ to 600,000 in '90		~ 0.7M <u>↓ 0.7</u>
- if Δ to 800,000 in '90		~ 0.9M <u>↓ 0.7</u>

UFS - Imputed Interest on VMKK loans

- We Agreed to 125,995 in 1988		
481,643 1989		
82,622 1990		
<u>690,260</u>	TAX 0.230	0.230
	INT 0.220	0.150
		<u>0.380</u>
- if dropped		<u>0</u> <u>↓ 0.3</u>

Spare Parts Inventory

- We agreed to 462,826 → 1988 fwd	TAX 0.150	0.150
	INT 0.150	0.100
- if dropped		<u>0.250</u> <u>↓ 0.2</u>

SCRIPPS 00416

GROSS  
COSTNET  
COST  
↓WMAR legal fees- We agreed to \$374,936 in 1991

to Gordunoff TAX 0.125

INT 0.100

0.125

0.065

0.190M

0.19

- if dropped1 way to compensate us(1) SCT - #2 we'd concede 75% of 15 May 8  
(+ IRS still wins 75% of this issue)(2) SCT - ITC - we'd lose \$800,000 in 1990  
(IRS still gets 30% on SCT +  
voids giving us ITC on other systems)(3) eitherdrop Cable Spans Parts issue 0.250  
and WMAR Legal fee issue 0.190

0.440

(4)

drop UPS Imputed Interest issue 0.380~ 1.6MOUR  
NET  
COST  
REDUCTION  
↓ 0.7M

↓ 0.5

~ 0.4



4/13/99  
amIRS Appeal - "Cash Bond" Interest Claim  
w/ JPH

The 1986 + 1985 RAR's don't add up (as he + Rick hoped)  
to our 12/90 TI increase estimate  
of \$16M w/ add'l tax of \$7.4M

These RAR's (dated in 1996 - more than 5 years later)  
when accrual related adjustments are all combined  
add up to about add'l taxable income of \$6  
with most of it for 1986, so add'l 1986 tax on  
\$5-6M would have been ~ \$2.5-3.0M on this

The amounts vary due to many discussions +  
refinements of the adjustments on the various  
separate accrual items the IRS proposed  
over the ensuing 5+ years.

But we had an agreed 1986 TI adjustment  
which we could reasonably calculate in 1990  
+ we did  
we expected to owe add'l tax plus related  
interest + we paid it  
we did not designate the remittance to be a cash  
bond; in fact we stated on the transmittal  
+ to find that it was a pymt of tax + interest  
+ that it was not a cash bond deposit  
(despite how find completed the deposit slip)  
Per even the IRS cited cases, this prepayment S/S

SCRIPPS 00249



treated as a payment of tax + interest  
which is entitled to interest when refunded

(\*\*)

I like Rich's point re: our filing of a  
 Form 1139 to CB the  
 1986 NOL when originally filed to earlier  
 tax years  
 as Rich indicated  
this CB, done prior to this audit of  
prepayment  
 put my 1986 account at TI of \$0  
 so the 1986 RAR  
 gave our 1986 tax year  
 a tax liability  
 as 1986 TI was increased  
 by this issue by 5-6%  
 + by ALL issues by 33%  
 (as opposed to the IRS's chief  
 argument that we never had a 1986  
 tax liability + we should have  
 known that we would never have one)  
 subsequently this 1986 tax liability  
 was also carried back to prior tax years  
 with the 1986 tax year liability ultimately  
 being \$0 after this CB  
 BUT we did have a 1986 tax liability  
 these RAR adjustments increased  
 1986 taxable income

As JPH points out, the 1986 KAR ends up with add'l JT on this accrual issue of about \$5-6M, which resulted in a tax liability of \$2.5-3.0, which is close to what we decided to prepay in 12/90.

At least in theory (+ Rick seems to agree with us)  
 + with the support of the cases cited by the IRS  
 we should be entitled to treat  
 our 12/90 remittance  
 as a pymt of tax + interest  
 + not as a cash bond  
 + therefore  
 we are entitled to interest  
 on the \$3.5M returned to us

While reconciling our # to the KAR #  
is problematic

many revisions/agreements on the various  
facts of this accrual method change  
occurred from 12/90 to the KAR in 1996.  
 + it is a matter of the #'s can be reconciled  
 It is only relevant that  
 we had a tax liability  
 + we paid a portion of it  
 + we did not designate it to be a cash bond

SCRIPPS 00251

THE E. W. SCRIPPS COMPANY  
P.O. BOX 5380  
CINCINNATI, OHIO 45201  
312 WALNUT STREET, SUITE 2800  
CINCINNATI, OHIO 45202

ROBERT M. CARROLL  
CORPORATE TAX DIRECTOR

PHONE (513) 977-3090  
FAX (513) 977-3090  
E-MAIL carroll@scripps.com



**SCRIPPS**

**RECEIVED**

August 6, 1999

**AUG 11 1999**

**APPEALS OFFICE  
CINCINNATI, OHIO  
INTERNAL REVENUE SERVICE**

Mr. Richard A. O'Connor  
Appeals Officer  
IRS Appeals Office  
312 Elm Street  
Room 2330  
Cincinnati, OH 45202

**RE: The E. W. Scripps Company**

Dear Rick:

This letter, which supplements my letter dated March 31, 1999, includes Jerome P. Hackman's affidavit and my affidavit. The affidavits evidence that The E. W. Scripps Company's intent was to make a payment of a tax liability and interest thereon (not a cash bond) on December 31, 1990. The affidavits support my letter dated December 31, 1990 which explicitly stated the Company's intent to pay the "1986 adjustments anticipated as a result of our previous settlement with the Internal Revenue Service, which changed our publishing affiliates' method of reporting from the cash method to the accrual method as of 1980". The check hand delivered with the letter (as stated in the letter) was intended to pay (among other things) \$2,000,000 increased tax liability (plus \$1,500,000 interest) for the Company's 1986 taxable year.

It is clear under the authorities set forth in my letter dated March 31, 1999 and herein that the December 31, 1990 rebittance was a payment of tax (plus interest) and that the

PARENT OF THE SCRIPPS HOWARD MEDIA COMPANIES



Mr. Richard A. G. Connor  
 August 6, 1999  
 Page 2

Company is entitled to interest in excess of \$2,245,212 on the amount it paid to the Internal Revenue Service on December 31, 1990 with respect to 1986.

My letter dated December 30, 1990 specifically designated the \$3,500,000 remittance as a payment for 1986 of \$2,000,000 tax adjustment plus \$1,500,000 interest thereon, not a cash bond. In Ameel v. Comm., 426 F.2d 1270 (6<sup>th</sup> Cir. 1970), the Sixth Circuit, the Court which has jurisdiction over the Company, held that a remittance made "in response to a proposed deficiency asserted by the Government. . . and made by Appellant [taxpayer] intended to satisfy a proposed deficiency and discharge any further tax liability. . . ." was a payment of tax. Like the remittance in Ameel, the Company's remittance was made to carry out its agreement with the Internal Revenue Service on Form 870-AD to switch its publishing affiliates from the cash to the accrual method of accounting and, when paid, was paid with the intent to discharge the Company's tax liability. The Sixth Circuit's decision in Ameel is unequivocal support for the claim for refund (as more fully described in my letter dated March 31, 1999).

It is clear from Ewing v. U.S., 914 F.2d 499 (4<sup>th</sup> Cir. 1990) and Moran v. U.S., 63 F.3d 663 (7<sup>th</sup> Cir. 1995) that formal assessment of tax is unnecessary. What is important is the taxpayer's intent to discharge its tax liability. The Company remitted the tax (plus interest) with the intent of discharging its tax liability. My letter dated December 31, 1990 explicitly states that intent. Further, Jerry Hackman's affidavit and my affidavit both evidence the Company's intent. The Company intended to pay the tax and, as reflected in Jerry Hackman's affidavit and my affidavit, directly communicated that intent to Internal Revenue Service Agent Sidney S. Saewitz. Agent Saewitz's checking a box on an Internal Revenue Service form which the taxpayer had



Mr. Richard A. O'Connor

August 6, 1999

Page 3

never seen before can only be viewed as inadvertent error. It was inconsistent with the taxpayer's intent.

In addition to Jerry Hackman's affidavit (which includes our calculation of the tax due for 1986) and my affidavit, I am enclosing a copy of my earlier letter dated March 31, 1999. I believe our affidavits and the authorities cited in my letter support the Company's position. I would be pleased to discuss this issue with you further if any questions remain as to your allowance of the Company's claim in full.

Very truly yours,

  
Michael W. Carroll

cc: Castellini, Hackman, Toomajian

**AFFIDAVIT**

I, Michael W. Carroll, am the Corporate Tax Director of The E. W. Scripps Company (the "Company") and have been employed in the tax department of the Company since June 11, 1979.

With the approval of the Company's Senior Vice President/Finance and Administration, Daniel J. Castellini, I authorized the Company's \$7,000,000 remittance made on December 31, 1990 of the Company's additional 1985 and 1986 consolidated federal income taxes, and the related interest, that the Company believed it owed as the result of the Company's agreement with the Internal Revenue Service ("IRS") on the Form 870-AD dated June 16, 1988 to change its publishing affiliates' method of accounting from the cash method to the accrual method as of the tax year 1990. My transmittal letter, dated December 31, 1990 to IRS Agent Sidney S. Saewitz, the IRS Audit Team Coordinator of the ongoing audit of the Company's 1985-1987 consolidated income tax returns, clearly indicated to the IRS that the Company's intent was to pay \$2,000,000 in additional 1985 tax, \$2,000,000 in additional 1986 tax, \$1,500,000 in interest on the additional 1985 tax, and \$1,500,000 in interest on the additional 1986 tax.

The June 16, 1988 Form 870-AD agreement bound the Company to change its publishing affiliates' method of accounting from the cash method to the accrual method for tax reporting purposes. In conjunction with that agreement and the closing of the Company's tax years through 1984, the additional tax and interest owed through the Company's 1984 tax year was assessed and paid. Although the IRS audit of the Company's returns for the years 1985, 1986 and 1987 began in early 1990, the additional

tax and interest owed for 1985 and 1986 as a result of the Form 870-AD agreement had not yet been calculated. The Company anticipated a significant additional tax liability for 1985 and 1986 due to this agreement, and wanted to pay what it owed as soon as possible. I asked Agent Saewitz to calculate the amount of additional 1985 and 1986 tax due as a result of this agreed method change so that the Company could pay the additional tax plus interest thereon before the end of 1990. He told me that he would not be able to complete this complex calculation by then. I then told him that the Company wanted to pay most of what it would owe in 1990, in order to both stop the accruing of interest on this known and agreed tax adjustment and also to deduct the payment of the interest on its 1990 return. We undertook the task of determining the additional tax and interest that the Company would owe and to pay it by year-end. Agent Saewitz offered to help submit the payment to the IRS.

The adjustments as a result of the July 16, 1988 Agreement through the Company's 1984 tax year had already been determined, assessed and paid and the Company had already filed its 1987 return using the accrual method of accounting. I instructed Jerome P. Hackman of my staff to calculate the additional tax the Company owed for 1985 and 1986 so that the Company could pay the additional tax and the related interest that it owed. We also researched how to make this payment of tax deficiency and related interest so that it would be treated by the IRS as a payment of tax and interest, and not as a cash bond, so that the Company could properly deduct the interest paid on its 1990 tax return. My transmittal letter that accompanied the Company's payment clearly identified it as a payment of additional tax and the related interest for the tax years 1985

and 1986. It did not request that this payment be treated as a deposit in the nature of a cash bond.

Because I was vacation on December 31, 1990, I asked Mr. Hackman to deliver the Company's \$7,000,000 payment, along with my transmittal letter, to the IRS Collections Department. When I returned from vacation early in 1991, Mr. Hackman advised me of his concern that Agent Saewitz, who had accompanied Mr. Hackman to IRS Collections, may have processed the Company's payment incorrectly, despite knowing that the intent was for this payment to be an payment of additional tax and related interest and not a cash bond. He told me that he raised this concern with Agent Saewitz at the time the payment was processed, and that Agent Saewitz had assured him that the payment would be posted and treated by the IRS as the Company intended, as an payment of tax and interest, just as I had designated it to be treated in my transmittal letter. He also assured him that the prepaid interest would be allowed as a 1990 tax deduction.

This December 31, 1990 payment was, in fact, posted to the Company's account as an Advance Payment of Exam Deficiency. We were able to confirm this on Account Transcripts which we later obtained for both tax years. We were therefore confident that the Company's payment had been properly treated by the IRS as intended, as an advance payment of additional 1985 and 1986 taxes owed and the related interest, which was deductible in 1990 the year in which it was paid.

In early 1995, Agent Saewitz informed me that our December 31, 1990 payments were treated as payments of tax and interest, and not as cash bonds. He assured me that the Company would receive interest on any of the monies that were refunded. We were

satisfied with his conclusion. We later learned that he then asked to have an IRS attorney research the issue further and confirm his conclusion.

On October 5, 1995 an Information Document Request was issued asking the Company to provide support for its 1990 deduction of the interest paid on December 31, 1990. Sometime after this and prior to the April 9, 1996 issuance of the proposed adjustment to disallow the Company's 1990 deduction of this interest, Agent Saewitz made it known to me that he had reversed his position on the December 31, 1990 payment of tax and interest and that it was now his opinion that it should be treated as a cash bond instead. He told me that the Company was not entitled to deduct the interest portion of it in 1990. He also told me that any amounts refunded to the Company would not be entitled to interest. I strongly objected to his recharacterization of the December 31, 1990 payment of tax and interest as a cash bond, especially as Agent Saewitz clearly knew that the Company's intent was for this payment to be an payment of tax and interest, and not to be a cash bond deposit. I reminded him that if the payment had been processed improperly that it was due to his handling of the payment voucher, which Mr. Hackman objected to when he prepared it, and that Agent Saewitz had assured him that the payment would be treated by the IRS as the Company had intended, as a payment of additional 1985 and 1986 tax and deductible interest.

On September 11, 1997 after the Company and the IRS had settled its tax years 1985, 1986 and 1987, the Company received a refund of the \$3,500,000 for the 1986 tax year without interest. Subsequently, on January 22, 1998 the Company and the IRS reached an exam settlement of all proposed IRS adjustments for tax years 1988-1991. In



this agreement, the IRS allowed the Company's 1990 deduction of the interest that it had paid on December 31, 1990.

On September 28, 1998 the Company filed its claim, requesting the interest to which it is entitled on the \$3,500,000 that was refunded to it, as this money was clearly intended to be a payment of tax and interest, just as the IRS posted it and treated it for years.

Under penalties of perjury, I state and swear that this statement is true, correct and complete, to the best of my knowledge and belief.

A handwritten signature in cursive script that reads "Michael W. Carroll". The signature is written in dark ink and is positioned above the printed name.

Michael W. Carroll

**AFFIDAVIT**

I, Jerome P. Hackman, am Tax Manager-Federal Audits of The E.W. Scripps Company (the "Company") and have been employed in the tax department of the Company since June 16, 1984.

On December 31, 1990, I hand delivered to the Internal Revenue Service Exam Division at its office on 550 Main Street, Cincinnati, Ohio, the Company's check dated December 31, 1990 in the amount of \$7,000,000 to the Internal Revenue Service ("IRS"). The \$7,000,000 check was attached to a letter dated December 31, 1990 from Michael W. Carroll, the Corporate Tax Director of the Company, to Internal Revenue Agent Sidney S. Saewitz, which letter specifically designated \$3,500,000 of the \$7,000,000 as payment of \$2,000,000 of tax (plus \$1,500,000 interest thereon) for 1986.

The \$7,000,000 remittance was intended to pay additional tax (plus interest thereon) that the Company calculated it owed for its 1985 and 1986 taxable years as a result of the Company's agreement with the IRS on Form 870-AD dated June 16, 1988 to change its publishing affiliates' method of accounting from the cash to accrual method.

In December 1990 Michael W. Carroll made the decision to make the payment to the IRS to satisfy the additional tax (plus interest thereon) for 1985 and 1986 resulting from the June 16, 1988 agreement with the Internal Revenue Service to change the Company's publishing affiliates' method of accounting from the cash to accrual method. The payment was intended not only to stop future interest accumulation on the additional 1985 and 1986 tax, but also to be deductible in 1990, to the extent of the portion designated as interest.

I calculated the additional 1985 and 1986 "cash to accrual switch" tax (plus the interest thereon). To calculate the additional tax I prepared a schedule of "Cash to Accrual Adjustments" on a cumulative basis comparing the December 31, 1986 Cash to Accrual Balance Sheets. A net cumulative Section 481(a) adjustment was computed by subtracting the Section 481(a) liabilities from Section 481(a) assets. Attached as an example is a copy of Denver Publishing's "Cash to Accrual Adjustments" schedule. The cash to accrual adjustments for tax years 1981 through 1984 had been computed by the Internal Revenue Service and agreed to by the Company prior to December 31, 1990. Therefore, I calculated the amount of tax and interest liability as of December 31, 1990. The amount of \$16,140,533 represented the total Section 481(a) adjustments for the two-year period of 1985 and 1986 for the newspaper affiliates. As the schedule labeled, "Cash to Accrual Adjustment For All Scripps Howard Newspapers & United Feature Syndicate From 1/1/82 to 1/1/87 By Year and Cumulative To 1/1/82" indicates, I multiplied the total 1985 and 1986 Section 481(a) adjustment by the 46% corporate tax rate to calculate an additional tax liability of \$7,424,645 for 1985 and 1986. I allocated the additional tax liability equally between the two tax years. I then calculated interest that would be due on this tax liability and included tax liabilities resulting from years 1982 through 1984 less an earlier Company remittance of \$5,500,000. Total tax of \$6,475,637 remained and I calculated interest on this amount to be \$3,306,363. The total tax and interest liability was \$9,782,000. Since the Company did not want to overpay on its liability, and as my calculation of it relied on many complex calculations done by various people in the Tax Department and the IRS, the Company

decided to round the tax and interest numbers down to a total of \$7,000,000 split equally between years 1985 and 1986.

Mr. Carroll was on vacation, so I was assigned the task of hand delivering the \$7,000,000 payment of tax and interest along with his transmittal letter. On December 31, 1990 Agent Saewitz and I walked to the IRS office. When we arrived there, Agent Saewitz stamped Mr. Carroll's transmittal letter and the \$7,000,000 check as received on December 31, 1990. At this point, while I waited, Agent Saewitz located a Form 3244- A "Payment Posting Voucher Examination" and had a secretary type various information on the Form 3244-A. Agent Saewitz explained to me that the IRS uses Form 3244-A internally to post payments to taxpayer accounts and Agent Saewitz then provided me with a copy of the document. Upon examination of Form 3244-A, I noticed that the "Cash Bond Box" had been erroneously checked. Immediately, I objected to the characterization of the payment as a cash bond. I explained to Agent Saewitz that the \$7,000,000 represented an advance payment of additional tax and related interest. Agent Saewitz responded that it would eventually be posted as the taxpayer designated it in the transmittal letter, but that for purposes of processing by the IRS collections department he was required to check either the "cash bond" box or the "Section 316 (C)" box. Since Agent Saewitz believed that Section 316 definitely did not apply, he said that he checked the "cash bond" box by default. He explained that the remittance would be posted as a payment of tax on the Company's transcript and that the interest would be deductible in 1990 by doing it this way. Again, I vigorously protested the checking of the "cash bond" box, but Agent Saewitz replied again that it had to be checked or "Collections" would not be able to process and accept the payment. Agent Saewitz acknowledged that he could understand my uneasiness and said that since he was the IRS Audit Team Coordinator for the Company that he would allow the interest expense as a deduction upon audit of the 1990 tax year. Agent Saewitz then suggested that he could have his secretary type the words

Send  
316(c)

TAX ADJ	2,000,000
INTEREST	<u>1,500,000</u>
	3,500,000

for each year on the Form 3244-A. Agent Saewitz said that by doing this the Company's intent to make a payment of tax and interest would be clearly evident. At this point having been told by Agent Saewitz that I had no other options, I delivered the payment as Agent Saewitz had arranged it.

On October 5, 1995 I received Information Document Request Number 12 regarding the 1988 through 1991 IRS Audit of the Company. This IDR requested workpapers on how the 1990 payment was handled on the Company's tax return. On April 9, 1996 I received "Form 5701 Number 2 Notice of Proposed Adjustment" regarding disallowance of the Company's 1990 interest deduction resulting from the December 31, 1990 payment. Sometime between October 5, 1995 and April 9, 1996 I realized that Agent Saewitz no longer considered the Company's December 31, 1990 payment to be a payment of tax and interest, but now considered the payment to be a deposit in the nature of a cash bond.

Under penalties of perjury, I state and swear that this statement is true, correct and complete, to the best of my knowledge and belief.

  
Jerome P. Hackman

JPH 12/21/90

COMPANY	TOTAL 487 ADJ. TOTAL 487 ADJ. & TOTAL 446 ADJ. BY YEAR 1981	TOTAL 487 ADJ. TOTAL 487 ADJ. & TOTAL 446 ADJ. BY YEAR 1982	TOTAL 487 ADJ. TOTAL 487 ADJ. & TOTAL 446 ADJ. BY YEAR 1983	TOTAL 487 ADJ. TOTAL 487 ADJ. & TOTAL 446 ADJ. BY YEAR 1984	ESTIMATE OF TOTAL 446 ADJ. BY YEAR 1985 & 1986	TOTAL
	THRU 1981	1982	1983	1984	1985 & 1986	
MININGHAM POST	1125,783.501	275,921.00	1238,096.001	112,503.00	14,026.501	20,518.00
CINNATI POST	1758,687.001	1,189,512.00	16,627,887.001	593,556.00	5,990,881.00	387,375.00
UNION CITIZEN JOURNAL	1,057,610.00	468,197.00	2,065,323.00	1,209,921.00	14,793,051.001	0.00
RIER	135,051.50	25,386.00	25,386.00	0.00	1128,920.501	56,743.00
VER PUBLISHING	4,387,708.50	3,406,592.00	2,788,752.00	2,609,853.00	1,138,288.50	13,730,994.00
ALD POST	305,734.50	74,599.00	46,815.00	20,398.00	139,602.501	487,944.00
PRIS PUBLISHING	1,826,716.00	816,989.00	1,716,680.00	253,785.00	3,545,537.00	7,558,347.00
KVILLE NEWS SENTINEL	493,831.50	61,284.00	375,082.00	1247,105.001	1,825,953.50	2,449,046.00
MEXICO STATE TRIBUNE	531,362.00	31,259.00	18,091.001	124,652.001	1483,347.001	44,531.00
TSBORGH PRESS	2,204,559.00	1222,201.001	1165,660.001	587,288.00	8,841,679.00	11,245,585.00
ART NEWS	261,462.50	126,955.001	166,065.001	418,148.00	1155,317.501	431,273.00
TATTLER	782,146.00	763,852.00	86,441.00	30,419.00	1258,768.001	803,898.00
IED	50,917.50	1178,786.001	723,800.00	12,531.00	126,868.001	50,088.50
SCRIPPS-HOME OFFICE	83,911.00	1864,339.001	88,560.00	409,792.00	458,772.00	368,036.00
	389,778.50	191,775.00	131,376.001	1104,026.001	52,508.50	498,658.00
LY COMPANY	18,462.001	30,046.00	134,527.001	22,510.00	18,883.001	764.00
ED FEATURE SYNDICATE	1,002,828.00	82,048.00	12,032,770.001	1,361,788.00	184,278.00	591,364.00
ONE BY YEAR	12,819,176.00	5,784,211.00	13,755,993.001	7,265,229.00	16,140,533.50	38,653,156.50
ONE BY YEAR RATE		5,784,211.00 46%	13,755,993.001 46%	7,265,229.00 46%	16,140,533.50 46%	26,033,980.50 46%
BY YEAR	2,680,737.06	11,451,756.781	3,342,005.34	7,424,645.18	11,975,631.83	
S CASH TAX BOND PAYMENT ON 12/20/88	3,000,000.00		0.00	2,500,000.00	0.00	5,500,000.00
AL TAX BDE	1339,262.941	11,451,756.781	842,005.34	7,424,645.18	8,475,631.83	



1                   IN THE UNITED STATES DISTRICT COURT  
2                   SOUTHERN DISTRICT OF OHIO  
3                   WESTERN DIVISION

4                   THE E.W. SCRIPPS COMPANY       :  
5                   AND SUBSIDIARIES               :  
6                   PLAINTIFF                    : CASE NO. C-1-01-434  
7                   VS                               :  
8                   UNITED STATES OF AMERICA       :  
9                   DEFENDANT                    :

10                               -   -   -  
11  
12                   Deposition of JEROME HACKMAN, a  
13                   witness herein, taken by the plaintiff as upon  
14                   cross-examination pursuant to the Federal Civil  
15                   Rules of Procedure and pursuant to agreement among  
16                   counsel as to time and place and stipulations  
17                   hereinafter set forth, at the offices of Baker &  
18                   Hostetler, 312 Walnut Street, Suite 3200,  
19                   Cincinnati, Ohio 45202, before Ross A. Giglio,  
20                   official Court Reporter within and for the State  
21                   of Ohio.

22                               -   -   -  
23                   GIGLIO REPORTING SERVICES  
24                   3 CYPRESS GARDEN  
25                   CINCINNATI, OHIO 45220  
                    (513) 861-2200

ORIGINAL

1 APPEARANCES:

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4 ON BEHALF OF THE PLAINTIFF:

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12 ON BEHALF OF THE DEFENDANT:

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E X H I B I T S

GOVERNMENT 1

Letter to Elliot from Carroll

GOVERNMENT 4

Letter from Saewitz to Carroll

GOVERNMENT 5

Posting voucher examination - 3244-A

GOVERNMENT 6

Corporate income tax return

GOVERNMENT 47

Letter from Carroll to O'Connor

GOVERNMENT 48

Handwritten note from Hackman to Carroll

GOVERNMENT 49

Cash to accrual adjustment

GOVERNMENT 52

Letter from Hackman to Castelini

- - -

1 Proceedings, December 5, 2002

2 JEROME HACKMAN

3 A witness herein, being duly sworn, was examined  
4 and deposed as follows:

5 CROSS-EXAMINATION

6 BY MS. HALLETT:

7 Q. State your name.

8 A. Jerome Hackman.

9 Q. Your address, sir?

10 A. Home?

11 Q. Yes.

12 A. 2488 Highcrossing Drive, Crescent  
13 Springs, Kentucky.

14 Q. Okay. Are you currently employed?

15 A. Yes.

16 Q. Where are you employed?

17 A. E.W. Scripps Company.

18 Q. How long have you been employed by  
19 E.W?

20 A. Since 1984, eighteen years.

21 Q. Okay. What is your current job  
22 title?

23 A. I'm the tax manager, federal audits.

24 Q. Okay. How long have you had that job  
25 title, tax manager, federal audits?

1           A.     I don't know off-hand. At least a  
2     few years. At least two years, at least.

3           Q.     What was your job title before that?

4           A.     I was a supervisor, federal tax  
5     supervisor.

6           Q.     Okay. Can you just briefly tell me  
7     about your educational background a little bit?

8           A.     I have a bachelors degree from Thomas  
9     More College, graduating in 1980. And I'm CPA.

10          Q.     Okay. Did you major in accounting?

11          A.     Yes.

12          Q.     Okay. Any post-graduate work?

13          A.     I did take a few tax courses at the  
14     University of Cincinnati, but I did not pursue a  
15     degree.

16          Q.     Okay. You said that you graduated in  
17     1980?

18          A.     Yes.

19          Q.     Okay. When you first started working  
20     for E.W. Scripps, what was your job title?

21          A.     I was a staff tax accountant.

22          Q.     Okay. How long were you a staff tax  
23     accountant?

24          A.     Probably three years. I was promoted  
25     to assistant supervisor, and then later to federal



1 tax supervisor. Later to tax manager, federal  
2 audits.

3 Q. So you were a staff tax accountant  
4 and then you became an assistant supervisor and  
5 then a supervisor?

6 A. Yes.

7 Q. And then I lost you after that.

8 A. And then my current title.

9 Q. Tax manager?

10 A. Yes.

11 Q. Okay. Okay. So, see if I have this  
12 time frame correct. You were staff tax accountant  
13 from, say, 1984 to about 1987?

14 A. Yes, roughly. I don't know for sure  
15 off-hand.

16 Q. Okay. And how long were you an  
17 assistant supervisor?

18 A. I would think three years. I have to  
19 look in my records to be certain. I just don't  
20 remember.

21 Q. Okay. Do you recall about  
22 approximately how long that you were in the  
23 supervisor position?

24 A. Well, whatever that all would equate  
25 to. Let's see. I just don't remember. I would

1 have to look in my records.

2 Q. That's fine. Show you an exhibit  
3 that was marked as Exhibit 47. If you could take  
4 a look at that document for me, please, and in  
5 particular, starting with the page marked at the  
6 bottom, page 258. You could take a look at the  
7 whole exhibit.

8 Are you ready?

9 A. I guess.

10 Q. I would like to refer you  
11 specifically to pages 258 through 260. Have you  
12 seen this document before?

13 A. Yes.

14 Q. Does page 260 contain your signature?

15 A. Yes.

16 Q. Is this an affidavit that you signed?

17 A. Yes.

18 Q. You may have had a chance already,  
19 let me know if you have not, to read the  
20 affidavit. Let me know if everything in the  
21 affidavit that you believe to be true and correct  
22 today.

23 A. Yes, I believe it to be true.

24 Q. Okay. The second paragraph of the  
25 affidavit states on "December 31, 1990, I

1 hand-delivered to the IRS examiner division at the  
2 office at 555 Main Street, Cincinnati, Ohio,  
3 company check dated December 31, 1990 in the  
4 amount of \$7 million to the Internal Revenue  
5 Service. \$7 million check was attached to a  
6 letter dated December 31, 1990 from Michael  
7 Carroll."

8 I would like for you now to take a  
9 look at Exhibit 4. Tell me if you have seen that  
10 document before.

11 A. Yes, ma'am.

12 Q. Is this a copy of the letter and  
13 check that you referred to in your affidavit?

14 A. Yes, it is.

15 Q. Also like to show you, have you look  
16 at Government Exhibit 5. Take a look at this  
17 document for me, please. Let me know if you  
18 recognize it.

19 A. Yes, I do.

20 Q. Could you tell me what it is?

21 A. It is a Form 3244-A examination  
22 posting voucher.

23 Q. Okay. How is it that you recognize  
24 this document?

25 A. When we made our payment of tax and

1 interest on December 31, 1990, since the Internal  
2 Revenue agent that I was dealing with, Sidney  
3 Saewitz, had a secretary type this up and then he  
4 date-stamped it, gave it to me.

5 Q. Okay. Did he give you a photocopy of  
6 this or did he give you the original document?

7 A. I believe that he gave me a photocopy  
8 of it.

9 Q. Okay. The Government Exhibit  
10 Number 4, I think that it is, if you could refer  
11 to that. Did you draft that letter?

12 A. No, I did not.

13 Q. Okay.

14 A. Mr. --

15 MR. EYRE: You were not asked the  
16 question who drafted it.

17 Q. In your affidavit, Government  
18 Exhibit 47, you referred to some calculations that  
19 you made?

20 A. Yes.

21 Q. 1985-1986 liability. Are those  
22 calculations reflected in Exhibit Number 4?

23 A. Yes. The outcome of those  
24 calculations are.

25 Q. Okay. I will now show you Government

1 Exhibit 49. Take look at that document for me,  
2 please.

3 A. Yes.

4 Q. Have you seen this document before?

5 A. Yes.

6 Q. Did you prepare it?

7 A. Yes, I did.

8 Q. Okay. Could you tell me what it is?

9 A. This is a calculation of -- it's the  
10 calculation that was intended to satisfy the  
11 additional tax and interest liability that was due  
12 to -- due to our method change that was -- due to  
13 the change of our method of accounting from cash  
14 to accrual basis, that we had reached an agreement  
15 with the IRS on June 16, 1988, to change our  
16 method of accounting. This is a calculation of  
17 that.

18 Q. Okay. This calculation was prepared  
19 by you?

20 A. Yes.

21 Q. Okay. On December 31, 1990, when you  
22 presented the letter, Exhibit 4, and the check to  
23 Sidney Saewitz, did you give him a copy of that  
24 calculation?

25 A. No, I didn't.



1 Q. Do you recall at any time giving  
2 Mr. Saewitz a copy of that calculation?

3 A. No, I do not.

4 Q. Okay. When you presented the letter  
5 and the check to Mr. Saewitz, where were you?

6 A. We were at his office at 550 Main  
7 Street.

8 Q. IRS? Was anybody else present?

9 A. Well, there were, the room from what  
10 I remember, there were other people. There is,  
11 like, a big room and then there is another room  
12 off to the side and I think that we were -- I had  
13 greeted other agents that I had known from  
14 previous audits, but I think that when we sat down  
15 we were alone, yes.

16 Q. You were sitting down when you  
17 presented him with the letter and check?

18 A. Yes.

19 Q. Do you recall what you told  
20 Mr. Saewitz?

21 A. I told him that here is the letter  
22 and here is our check. We intend to pay the  
23 additional tax and interest that we owe for years  
24 1985 and 1986 as a result of the June 16th, 1988  
25 agreement to -- that I guess it was done on Form

1 870 that we had signed, and this is a payment of  
2 the tax and interest and that, you know, he knew  
3 that our intent was to make this payment before we  
4 had -- well, we had asked him to make the  
5 calculation and he had said that he did not want  
6 to because of the complexities of it.

7 Q. Let me back up. You asked him to  
8 make which calculation?

9 A. To do this calculation for us, since  
10 the IRS was adjusting our method of accounting.

11 Q. By that, do you mean the additional  
12 liability for the '85 and '86 tax years?

13 A. Yes.

14 Q. Okay. So do you recall when you  
15 asked Mr. Saewitz to make the calculation?

16 A. No, I did not. My boss, Michael  
17 Carroll, asked him and I don't remember if I was  
18 present when Mike asked him to do that or not.

19 Q. Okay.

20 A. But he didn't want to do it and so we  
21 decided that we would do it and we alerted him to  
22 what we were trying to do, that we wanted to pay  
23 the tax and interest that we owed for years 1985  
24 and 1986. Basically, that's what we did. We  
25 brought the check and Mike's transmittal letter

1 over to the service and we paid the additional tax  
2 and interest that we expected to owe.

3 Q. when you say "we," who are you  
4 referring to?

5 A. well, it was really me bringing the  
6 actual check and the transmittal letter over but,  
7 I mean, I was directed to prepare this calculation  
8 by Mr. Carroll. And I assume that Mr. Castelini  
9 had told him that he wanted this liability paid  
10 since the interest would only accumulate if we did  
11 not pay it, and by doing this we felt that we  
12 would stop the accumulation of any interest on the  
13 liability since it was fixed and determinable at  
14 that point and also we would obtain the interest  
15 deduction on the amounts that we designated as  
16 interest.

17 Q. okay. Do you recall having any  
18 discussions at that time you delivered the check  
19 and letter to Mr. Saewitz about the calculation or  
20 the amount of additional liability that you had  
21 determined?

22 A. Could you repeat that?

23 Q. Do you recall having any discussions,  
24 conversation, with Mr. Saewitz at the time that  
25 you delivered the check and letter to him about

1       how you calculated the liability or about the  
2       dollar amount of the liability at all?

3               A.       No.

4               Q.       Okay. I would like to refer you to  
5       Government Exhibit Number 5. Now, in your  
6       affidavit, I believe that you stated that  
7       Mr. Saewitz had a secretary prepare this document;  
8       is that correct?

9               A.       That's correct.

10              Q.       So to the best of your knowledge,  
11       Mr. Saewitz did not prepare this document?

12              A.       No, he did not.

13              Q.       Now, you will notice this document,  
14       the cash bond box is checked?

15              A.       Yes.

16              Q.       Did you notice that on  
17       December 31, 1990?

18              A.       Yes, I did. And I alerted  
19       Mr. Saewitz that I thought that this was incorrect  
20       to do this, that this box should not be checked  
21       because we were not making a cash bond payment.  
22       He knew that it was not our intent. Our intent  
23       was always to make a payment of tax and interest  
24       for the amounts that we owed for the additional  
25       tax liabilities that we knew and interest that we

1        owed for years 1985 and 1986.

2                Q.        Okay. Now, you said that Mr. Saewitz  
3        knew that it was your intent to make a payment and  
4        not a cash bond. How do you know that he knew  
5        that was your intent?

6                A.        well, if he didn't know up to that  
7        time, I told him right at that moment what we were  
8        trying to do. We were trying to make a payment of  
9        tax and interest. But he, I mean, Mike Carroll  
10       and I had discussed that we wanted to pay the tax  
11       and interest that we expected to owe for years  
12       1985 and 1986. And we wanted to pay the tax and  
13       we wanted to pay the interest associated with that  
14       liability. And, I mean, we told him that numerous  
15       times. I mean, he knew that. And I told him that  
16       day again that's what we were doing.

17              Q.        You specifically told him on December  
18       31, 1990 that you wanted to make a payment and not  
19       a cash bond or deposit?

20              A.        That's correct.

21              Q.        Okay. Are you sure about that?

22              A.        Yes.

23              Q.        Did Mr. Saewitz say anything to you  
24       about why the cash bond box was checked?

25              A.        Yes. He said for processing purposes

1 for the collection department that they needed to  
2 check either the Send 316(c) box or the cash bond  
3 box to process it. And at that point, I said,  
4 well, it is incorrect to do this because we are  
5 not making a cash bond payment.

6 Basically, we discussed it back and  
7 forth and he kept telling me in order for the  
8 collection department to process it, that for the  
9 transcript to be posted, that one of these two  
10 boxes had to be checked or he could not process  
11 this payment and that he would not be able to  
12 consummate the transaction.

13 Q. Okay.

14 A. So then he -- well, then I told him  
15 again that I didn't feel that this was correct to  
16 do and his response was well, you know, I'm going  
17 to be your IRS team coordinator for the 1990 cycle  
18 and I know what your intent is and that you want  
19 to obtain an interest deduction for the amount  
20 specified as interest, and he said that I would  
21 allow that in 1990.

22 Q. Okay.

23 A. And then he added, said what we could  
24 do also is to have the secretary type the words  
25 "tax adjustment and interest" for the \$2 million



1 of tax adjustment and the million five of interest  
2 on the form itself in the remarks box. I said  
3 well, I guess that would help, and he said that  
4 will clearly show that your intent was to pay, to  
5 make the payment, the payment of interest --  
6 excuse me -- the payment of tax and interest and  
7 not a bond payment.

8 Q. Okay.

9 MR. EYRE: I'm not sure that it was  
10 clear. Maybe you want to clarify the form  
11 that he got originally did not have the  
12 remarks section.

13 A. Right. This was later. He handed  
14 this back to the secretary and had her type this  
15 on there, gave it back to me.

16 Q. So it was Mr. Saewitz's idea to type  
17 the --

18 A. Yes, it was.

19 Q. Okay.

20 A. Yes.

21 Q. On December 31, 1990, during that  
22 time period, in your mind, what was the difference  
23 between a payment and a cash bond?

24 A. Well, if it was a cash bond,  
25 basically, you would not be able to deduct the

1 interest. It would stop the accumulation of  
2 interest on the -- whereas the payment of tax and  
3 interest, if you have a known liability and it is  
4 fixed and determinable, you could pay the tax and  
5 you could also pay the associated interest with  
6 that and you could obtain an interest deduction.

7 Q. would it be correct to say that it  
8 was scripps's main purpose was to get an interest  
9 deduction in making this payment?

10 A. Two-fold. Stop the accumulation of  
11 the interest and also to obtain the interest  
12 deduction in 1990.

13 Q. Okay. December 31, 1990, do you  
14 recall your job title with Scripps?

15 A. I was either tax supervisor or tax  
16 manager at that point.

17 Q. Okay. What did your job duties  
18 entail?

19 A. Well, we prepared tax returns part of  
20 the year.

21 Q. That would be scripps's tax return?

22 A. Yes.

23 Q. Federal return?

24 A. Yes, for the Consolidated Group.

25 Q. Okay.

1           A.     And I was responsible for preparing  
2     some returns and reviewing numerous returns that  
3     were prepared by others during the year. And then  
4     we would also do estimated tax payments on a  
5     quarterly basis. Then I also, that was about  
6     probably fifty percent of my work. And then the  
7     other fifty percent was probably dealing with  
8     Internal Revenue agents on the current audit  
9     cycles that we were working.

10           Q.     Okay. Did Scripps prepare the tax  
11     returns in-house or would some outside accounting  
12     firm prepare them?

13           A.     In-house.

14           Q.     In-house. Okay.

15           A.     I also did research on, you know,  
16     when we received questions, that kind of thing, or  
17     if Michael Carroll, the Corporate Tax Director,  
18     gave me an assignment or a project to research, I  
19     would do that, so it was a mixture of duties.

20           Q.     Okay. They were all tax-related  
21     duties?

22           A.     Yes.

23           Q.     At that time, about how many people  
24     were in the tax department of Scripps?

25           A.     well, depends upon what time frame.

1 Q. December 31, 1990.

2 A. I would say the most that we ever had  
3 was ten.

4 Q. Okay.

5 A. And now we are down to five. So I  
6 would think back then we probably had six or  
7 seven, I guess.

8 Q. Okay. Okay. When you prepared this  
9 calculation for the 1985 and 1986 tax year, did  
10 you refer to the 1986 tax return, the Scripps 1986  
11 tax return in making those calculations?

12 A. No, I didn't.

13 Q. Do you know what you referred to in  
14 making the calculation? Any other documents?

15 A. Well, I mean, these, the numbers. Do  
16 you want to know where the numbers came from?

17 Q. Yes. Exactly.

18 A. Is that what you are asking?

19 Q. Yes. Exactly.

20 A. The total column, well, let's take  
21 one step back. We were mandated by the change in  
22 the legislation to adopt the accrual method of  
23 accounting as of 1/1/87. With the 12/31/86 return  
24 that we filed, we had done -- we had calculated  
25 the amount of the Section 481 adjustment in total

1 that we would on a cumulative basis the difference  
2 between the method that we had been on, the cash  
3 basis, and the accrual basis. And that difference  
4 is represented in this number \$38,653,757.

5 Q. Okay.

6 A. And so that it is the cumulative  
7 affect of the accounting method change from cash  
8 to accrual. And the numbers that you see for  
9 years '81, '82, '83 and '84, these were  
10 adjustments that had been made due to that method  
11 change by the IRS.

12 Q. Okay. So if I could stop you there.  
13 The '82, '83, '84 numbers were numbers that the  
14 IRS came up with?

15 A. Yes, ma'am.

16 Q. Were these numbers that Scripps  
17 agreed with?

18 A. Yes.

19 Q. Okay. Okay.

20 A. And so --

21 Q. Well, how was it that you determined  
22 the '85 and '86 numbers?

23 A. Okay. What I knew was that we had,  
24 cumulatively, we had a change totaling \$38,653,757  
25 and what I then had to do was to go back and

1 figure out what the amounts would be for 1985 and  
2 1986. In order to do that, I took the adjustments  
3 that the IRS had already calculated for '81, '82,  
4 '83 and '84, put them all into the spread sheet by  
5 company. In some cases, I had to -- they would do  
6 a 446 adjustment, which is the year increment, and  
7 then we had a 481 KLA calculation, which is a  
8 four-year spread. The way that they had done it,  
9 I had to go back. They had done it piecemeal, so  
10 I had to go back and piece together, you know,  
11 who, which company did the 481(a) adjustment  
12 belong to.

13               Once I did that, I added that to the  
14 446 increment for each year and then I knew and I  
15 knew in total the total agreed to each of the  
16 total IRS adjustments for each year, so I knew  
17 that I had everything in the right category.

18               Because later on, we would use this  
19 to, you know, to set up the tax liabilities owed  
20 by each company, so we used it internally also.  
21 So anyway, what I did then was to simply, the '85  
22 and '86 amounts were simply squeezed out by  
23 subtracting from the cumulative total the amounts  
24 for 1981, '82, '83 and '84 from that.

25               Q.     Okay.



1           A.     That gave me a number which  
2     represented '85 and '86.

3           Q.     Okay. That's what that is. So this  
4     is -- this number represents, am I correct, the  
5     total in income for the '85 and '86 tax years?

6           A.     That's correct.

7           Q.     So the \$16,140,533.50 adjustment is  
8     the increase of income from 1985 and 1986?

9           A.     That's correct.

10          Q.     Is this based strictly on the change  
11     from cash to the accrual method?

12          A.     Yes.

13          Q.     Okay. Is there any way -- well, back  
14     up. Are those your initials on the top of this  
15     form?

16          A.     Yes.

17          Q.     Dated 12/21/1990?

18          A.     Yes.

19          Q.     Is that the date that you prepared  
20     this?

21          A.     That's the day that the final  
22     calculation was done, but it took me more time  
23     than one day to do it.

24          Q.     Okay. Do you recall approximately  
25     how much time that you spent doing it?

1           A.     Well, significant time. I'm sure  
2     that we worked on our 12/15 estimates, but I would  
3     say Mike gave me this project in early December  
4     and so I probably worked off and on probably from  
5     roughly December, roughly speaking, from probably  
6     around December 1st through December 21st on it.

7           Q.     Okay. Did anyone review your  
8     calculations for accuracy?

9           A.     Mike Carroll examined this. He did  
10    not do a thorough review.

11          Q.     Okay.

12          A.     These calculations were very complex  
13    and with the amount of -- Mike was also going on  
14    vacation. Due to that and the complexity of these  
15    calculations, I'm assuming that he did not feel  
16    that he had time to do a thorough review of it.

17          Q.     Now, I see here that you have  
18    multiplied the \$16 million by 46 percent?

19          A.     That's correct.

20          Q.     Is that the effective tax rate for  
21    scripps for the year?

22          A.     That's the federal income tax rate at  
23    that time.

24          Q.     And you came up with the \$7 million  
25    tax figure; is that correct?

1 A. Yes, ma'am.

2 Q. That's for the combined years of '85  
3 and '86?

4 A. Yes.

5 Q. Okay. Now, I noticed in the letter  
6 that Mr. Carroll sent, the December 31, 1990  
7 letter, that there was the total of \$7 million  
8 remitted. And there was a breakdown between the  
9 1985 and 1986 tax years; is that correct?

10 A. Yes.

11 Q. How is it determined how much --  
12 well, how is it determined that the \$7 million  
13 payment would be made in the first place?

14 A. Well, Mr. Carroll determined that we  
15 would pay \$7 million.

16 Q. Do you know how he made that  
17 determination?

18 A. If I do, I don't remember.

19 Q. Okay. That's fine. Do you know how  
20 it was determined that there would be \$2 million  
21 applied to tax for '85 and \$2 million applied to  
22 tax for '86?

23 A. Yes. What we did, as you go back to  
24 the schedule here, Exhibit 49, if you go to the  
25 total column, when you come up to the total

1 column, if you go to tax by year --

2 Q. Okay.

3 A. That's a running total starting from  
4 '82, a combination of the '82, '83, '84 and the  
5 '85 and '86 amounts.

6 Q. Okay.

7 A. And that was the total amount of tax  
8 that was owed for the switch from cash to the  
9 accrual method of accounting.

10 Q. Okay.

11 A. And we had made a payment on  
12 12/31/88. I think that says 12/20. Maybe we did  
13 make. I believe that we did make it earlier than  
14 12/31. But we paid \$3 million of tax in 1982 and  
15 we made a payment of \$2.5 million of tax in '84,  
16 so that totals \$5.5 million.

17 So what I did was I took the total  
18 tax, less the amount that we had already paid for  
19 the preceding years, and that left us with a  
20 liability of \$6,475,633.

21 Q. Okay.

22 A. And then what I did, since we could  
23 not at that point sit down and actually calculate  
24 the yearly increments, 1985 and 1986 yearly  
25 increments to the dollar, we could only make a

1 reasonable calculation that both years would be  
2 roughly equal, so what I did was I just divided  
3 the tax liability in two. I took half of the tax  
4 and assumed that it was owed for 1985 and I took  
5 the other half and I assumed that it would be owed  
6 for 1986.

7 Q. Okay.

8 A. So, roughly, what would that be?  
9 \$3,200,000 of tax for each year. And I could not  
10 speak for Mr. Carroll, but I assumed that because  
11 of the complexities of the calculation and, you  
12 know, we later agreed that we should round it down  
13 some, but I don't know how he decided to round it  
14 down to that exact number.

15 Q. Okay.

16 A. But we agreed that due to the  
17 complexities of this that, you know, we didn't  
18 want to overpay the liability to the IRS.

19 Q. Okay. Now, you stated that you could  
20 not determine exactly the dollar amount for 1985  
21 and the dollar amount for 1986. why is that?

22 A. Because you would have to take all of  
23 the balances for each year, compare the 12/31/84  
24 numbers to the 12/31/85 numbers and make your  
25 calculations on that, and then do the same thing

1 for the year-end balances for years, for 12/31/85  
2 and 12/31/86.

3 Q. Okay.

4 A. And, I mean, you're talking hundreds  
5 of calculations.

6 Q. Okay.

7 A. Maybe to explain more this  
8 \$38 million number.

9 Q. The total?

10 A. Yeah, on the total. All these  
11 calculations in the total column had been done  
12 previously.

13 Q. Who did these?

14 A. Well, I did the Denver Publishing  
15 Company myself. I came up with the \$13,730,994.

16 Q. Okay.

17 A. That's the only one that I did  
18 myself. Rest of these were done by other tax  
19 accountants in our tax department.

20 Q. Okay.

21 A. So, I mean, these took quite a bit of  
22 time to do each company, and that's what you would  
23 need to do to actually calculate the 1985 amount  
24 and the 1986 amount. And that's what the IRS  
25 actually did with the preceding years. That's why



1 Sid Saewitz did not want to do this because he  
2 didn't feel that he had enough time to do the  
3 calculations. And that was his feeling on it.

4 Q. Okay.

5 A. But I do want to add that, you know,  
6 the liability was fixed and determinable. We  
7 could measure what the liability was. I think  
8 that this is a valid measure of it.

9 Q. Okay. I would like to refer you to  
10 Government Exhibit 6. Take a look at that and  
11 tell me if you have ever seen that before or not.

12 A. Yes, I recognize it.

13 Q. Could you tell me what it is?

14 A. This is a tax return for the year  
15 1986 for the Scripps Company, U.S. Corporate  
16 Income Tax Return, Form 1120.

17 Q. Did you prepare this form?

18 A. No, I didn't.

19 Q. Do you know who did?

20 A. Well, this is a consolidated form, so  
21 it was either, I believe Jeff Frazier, I believe,  
22 in our tax department prepared it. Or it could  
23 have been Rob Stafford. I don't know which  
24 gentleman prepared it. But it was one or the  
25 other.

1 Q. Okay. So if I am correct about  
2 Mr. Carroll's letter to Sid Saewitz, he has  
3 proposed a \$2 million dollar tax adjustment for  
4 1986, and a \$1.5 million interest payment for  
5 1986; is that correct?

6 A. That's correct.

7 Q. Okay. Now, based upon your  
8 calculations that you did for the '85 and '86  
9 year, if the tax adjustment was divided by two,  
10 would it be correct then to divide the increase in  
11 income by two, by the '85 and '86 years?

12 A. I guess that you could say that, yes.

13 Q. Okay. So that would mean  
14 approximately an \$8 million increase in income for  
15 '85 and an \$8 million increase for '86?

16 A. That would be correct.

17 Q. Okay. So if looking at the '86  
18 return, if you increased the income by \$8 million,  
19 can you tell me if that would have any effect upon  
20 the tax liability for 1986?

21 MR. EYRE: Objection. You can  
22 answer.

23 A. This tax return by itself, no, it  
24 would not change.

25 Q. Okay. It would not change or it

1 would not affect the tax liability?

2 A. Wouldn't affect the tax liability.

3 Q. Which numbers would it change?

4 A. Except for we did carry this loss  
5 back to 1983.

6 Q. Okay. Which loss? Can you refer to  
7 the line on the tax return so that I am with you?

8 A. The \$62 million loss.

9 Q. That would be line 30?

10 A. Yes.

11 Q. Okay. You know that the \$62 million  
12 was carried back to '83?

13 A. Yes.

14 Q. All \$62 million was carried back?

15 A. No, part of it went into, I believe,  
16 1984. I don't believe that it all was to be used  
17 in '83.

18 Q. Do you recall approximately how much  
19 went to each year?

20 A. Not off-hand, no.

21 Q. Okay. Okay. Would an increase in  
22 income for 1986 by \$8 million change the amount of  
23 the tax loss carryover?

24 MR. EYRE: Objection.

25 A. Well, the increase of \$8 million was

1       our, again, was our calculation of what we would  
2       owe, the additional tax and interest that we would  
3       owe for years 1985 and '86 from, you know, from  
4       the switch from the cash method to the accrual  
5       method of accounting.

6               Q.     Right. But my question is if you  
7       increased income, gross income by \$8 million for  
8       the '86 year, would that change the amounts of the  
9       net operating loss, the \$62 million loss?

10              A.     Yes.

11              Q.     would that change, then, 1983 or 1984  
12       income tax liability?

13              A.     Yes, it would.

14              Q.     Okay. Do you recall what the 1983  
15       tax liability was?

16              A.     No.

17              Q.     How about '84?

18              A.     No, I do not.

19              Q.     Okay. Okay. I would show you what  
20       was marked as Government Exhibit Number 48. If  
21       you could take a look at that document for me,  
22       please. Have you seen this document before?

23              A.     Yes.

24              Q.     Could you identify it?

25              A.     Yes. I prepared it back, well, dated

1 December 28, 1990.

2 Q. Okay. Is this -- what is this?

3 A. Research.

4 Q. Okay. Is it addressed to Mike?

5 A. Yes. It says "Mike."

6 Q. Okay. I hate to ask you to do this.  
7 I had a hard time reading this. Could you -- this  
8 is in your handwriting?

9 A. Yes.

10 Q. Could you just read it in the record?

11 MR. EYRE: We hope that you could  
12 read your own writing.

13 A. I hope so.

14 MR. EYRE: If not, I have trouble.

15 Q. It was not that bad.

16 A. Sure. "DJC called 12/27 saying he  
17 would like to delay the \$7 million payment until  
18 1/4/91 because banks would charge a higher  
19 interest rate on a year-end loan than by waiting  
20 until first week of 1991. His question was could  
21 deduct \$3 million of interest in 1990 if we waited  
22 to make \$7 million payment until 1991? They will  
23 set up a \$3 million interest accrual for books.  
24 Seems to me we would have to at least pay the \$4  
25 million in tax by year-end in order to set up the

1 liability for interest" -- and I think that this  
2 word over here is fixed liability.

3 Q. Okay.

4 A. "Seems to me that we would have to at  
5 least pay the \$4 million in tax by year-end in  
6 order to set up the liability for interest since  
7 an RAR for 1985 and 1986 has not been delivered to  
8 Scripps Howard by IRS. Although" in parentheses,  
9 Although under 461(f), all events have occurred to  
10 fix the liability -- IRS switched us to accrual in  
11 1980 -- the amount can be accurately determined,  
12 \$3 million for interest, economic performance  
13 occurs since interest economically accrues for  
14 accrual basis companies.

15 Payment of tax, without calling it a  
16 cash bond (call it tax owed for cash to accrual  
17 switch from newspaper group) would have same  
18 effect as filing an amended return by December 31,  
19 1990 and paying the tax, which would establish an  
20 interest deduction for 1990. DJC says that he  
21 would definitely like to deduct \$3 million in  
22 interest in 1990 and not just stop the  
23 accumulation of further interest.

24 Therefore, if we need the \$7 million,  
25 if we made that \$7 million paid by 12/31/90 he



1 will authorize it, but he prefers to wait until  
2 1/4/91 to make payment if possible and maintain a  
3 \$3 million dollar interest deduction.

4 Doug and I ironed out our differences  
5 on cash to accrual numbers on Wednesday. He had a  
6 \$700,000 mistake on Pittsburgh Press and I forgot  
7 to back out, take pre-1954 adjustment of \$3  
8 million. After we were done, our difference was  
9 within \$500,000 of taxable income on the overall  
10 adjustment. We still had small individual company  
11 differences. Instead of \$4.4 million of tax it  
12 should be about \$4.7 million of tax.

13 Mike, my main concern with DJC is do  
14 we have an actual liability under 461(f) and then  
15 since we have no RAR only 1980 settlement forcing  
16 us to switch to accrual basis for which we could  
17 deduct \$3 million of interest in 1990 or even in  
18 1991, should we word our letter differently.

19 A cash bond only serves to stop the  
20 running of interest and does not give rise to an  
21 interest deduction. Whereas it appears that if we  
22 do not designate the payment as a cash bond, but  
23 call it "tax due for switch from cash to accrual  
24 basis of accounting," the interest appears to be  
25 deductible in the year paid per Revenue Ruling

1 8.9-6. I will discuss further with you on Monday.  
2 We deducted interest on last cash bond payment in  
3 1988, whether correct or not. I doubt if an agent  
4 would challenge a cash payment for interest.  
5 Laskey will need to know by 11:00 Monday. If we  
6 make no payment until 1991, I don't believe that  
7 we could deduct the \$3 million of interest in 1990  
8 since we have no RAR for years 1985 and 1986.  
9 Jerry."

10 Q. Okay. Does Mike refer to Mike  
11 Carroll?

12 A. Yes.

13 Q. Who is DJC?

14 A. Dan Castelini.

15 Q. Who is the Doug referred to?

16 A. Doug Lyons.

17 Q. Who is Doug Lyons?

18 A. Presently the director of accounting.

19 Q. He is employed with Scripps?

20 A. Yes, he is.

21 Q. Okay. Who is the Laskey that is  
22 referred to in the letter?

23 A. He was the assistant treasurer for  
24 the Scripps Company.

25 Q. Okay. Like to show you what was

1 marked as Government Exhibit Number 1. If you  
2 could take a look at that. Tell me if you have  
3 seen this before.

4 A. Yes, I have.

5 Q. Could you tell me what this is?

6 A. This is a letter dated December 22,  
7 1988, to the Internal Revenue Service case  
8 manager.

9 Q. Okay. Is this written by Mike  
10 Carroll?

11 A. Yes.

12 Q. Okay. Now, Exhibit Number 48 is  
13 dated December 28, 1990, refers to interest  
14 deduction on a cash bond payment made in 1988; is  
15 that correct?

16 A. Yes.

17 Q. Okay. Is the interest referred to in  
18 your letter the interest figure that showed up on  
19 Exhibit 1?

20 A. Yes.

21 Q. Okay. So Scripps took an interest  
22 deduction for the interest paid as reflected in  
23 this letter dated December 22nd, 1988?

24 A. Yes.

25 Q. Who made that decision that Scripps

1 would take the interest deduction?

2 A. Well, the preparer of the return  
3 prepared a tax adjustment for that.

4 Q. Do you know who the preparer of the  
5 return was?

6 A. I don't know for sure. I believe  
7 that it was Jeff Frazier, but I don't remember for  
8 sure.

9 Q. But would that deduction have to be  
10 approved by anybody?

11 A. Yes.

12 Q. Who would have to approve it?

13 A. The reviewer and then the reviewer of  
14 the return and then, ultimately, Mike Carroll, who  
15 was Corporate Tax Director.

16 Q. Do you know who the reviewer of the  
17 return was?

18 A. I don't remember. It was either  
19 probably me or possibly one other person.  
20 Probably -- well, I don't want to give you a name  
21 because I'm not sure.

22 Q. That's fine. Okay. That's fine.  
23 Okay. I want to go back to the December 31, 2000  
24 payments that you delivered to Mr. Saewitz, the  
25 check for \$7 million.

1 A. Yes.

2 Q. Okay. Now, you stated earlier that  
3 you were clear that you indicated to Mr. Saewitz  
4 that Scripps wanted to make a payment and not a  
5 cash bond; is that correct?

6 A. Yes.

7 Q. Okay. Do you recall how much time  
8 that you spent talking to Mr. Saewitz about this  
9 \$7 million check?

10 MR. EYRE: Meaning at that moment?

11 Q. Yes. At that time.

12 A. Do you mean when we were over at the  
13 office?

14 Q. Exactly.

15 A. How long that I was there?

16 Q. Yes.

17 A. I'm sure that I was there at least an  
18 hour.

19 Q. Did you spend the whole hour talking  
20 about how the payment of the \$7 million, how it  
21 was to be treated?

22 A. I don't remember how much time  
23 exactly was spent. I greeted some of the other  
24 agents. We had discussions, you know, about  
25 family, this kind of thing, how are you, have not

1       seen you in a long time, health issues, I'm sure.

2               MR. EYRE: Are you saying that you  
3       had not seen Mr. Saewitz in a long time  
4       when you say "long time"?

5               A.     No. His predecessor, George Imwalde,  
6       was our IRS agent. I spoke to him. I knew some  
7       of the other fellows. I don't recall names. I do  
8       remember speaking to George, but there were, you  
9       know, more than two or three people in the room.

10              Q.     All right.

11              A.     In the big room.

12              Q.     Did you talk to any of these other  
13       agents employed by the IRS about the \$7 million  
14       payment treated as a cash bond or a payment?

15              A.     Well, since we had done one  
16       previously in 1988, had made a payment that was,  
17       that we considered to be a cash bond payment, when  
18       I walked through the door, they knew that I was  
19       going to make another payment.

20              Q.     Okay.

21              A.     Because I guess Sid Saewitz had told  
22       them that I was to be expected in their offices  
23       that day to make a payment of tax and interest on  
24       our liability for years '85 and '86. So --

25              Q.     I guess that the question is, after



1 you had observed that Sid had marked the cash bond  
2 box on, I guess that it was Exhibit Number 5, did  
3 you have any discussions with any of the other  
4 employees or agents of the IRS regarding how the  
5 \$7 million was to be treated, whether it would be  
6 a payment or a cash bond?

7 MR. EYRE: Objection. That question  
8 assumes facts not in evidence. I don't  
9 believe that he said that he observed  
10 Mr. Saewitz checking that box.

11 Q. That's correct. After you observed  
12 that the box was checked as cash bond, did you  
13 have any discussions?

14 A. With the other agents in the room?

15 Q. Yes.

16 A. I don't remember. I don't believe  
17 that I did. I'm sure that -- I'm sure that Sid  
18 and I discussed it amongst ourselves.

19 Now, who was around? I don't know if  
20 somebody was, you know, standing behind us or,  
21 because I was pretty intent on this because I  
22 thought that it was an error that the IRS was  
23 making by checking this cash bond box. And I  
24 assumed that it was just Sid and I, and I would  
25 think probably the secretary that had typed this

1 was in hearing distance because I would assume  
2 that she was because she was only a few feet away  
3 from us when she typed this. So I would think  
4 that she was still in the room, but, that part of  
5 it, you know, I don't know if other people were  
6 around.

7 Q. Do you recall the name of the  
8 secretary who typed the form?

9 A. No, I don't. All that I could tell  
10 you is that she was a female and that's all that I  
11 know --

12 Q. Okay.

13 A. -- at this point.

14 Q. Okay. After you had delivered the  
15 check and the letter, had conversation with Sid,  
16 when you left the IRS, how did you think that the  
17 IRS was going to treat the \$7 million check, as a  
18 cash bond or as a payment?

19 A. I thought that the IRS would treat it  
20 as a payment because I had reiterated to Sid time  
21 and time again that we were making a payment of  
22 tax and interest and he understood what we were  
23 doing. And he said just for collection purposes,  
24 this box had to be checked, and he assured me that  
25 it was a payment of tax and interest. I trusted

1 him. I really, you know, took him to his word  
2 that when we audited 1980, that he would allow it  
3 as a deduction. And I had no reason to doubt him  
4 up to that point. Our relationship was always  
5 honest and I had respect for Sid and I think that  
6 he respected me. I just had no doubt that what he  
7 said to me would hold true.

8 Q. Okay. Okay.

9 A. So I did want to add, I mean, you  
10 know, I did reiterate more than once at that point  
11 in time and he understood that we were making a  
12 payment of tax and interest and not a cash bond.  
13 And you know, he assured me that it was to be  
14 posted correctly and I guess that later on, we  
15 never received any notices to the contrary to  
16 indicate that it was, that the IRS was going to  
17 say it was a cash bond, and we deducted that on  
18 our December 31, 1990 return, and after the  
19 examination of that year was over, it was allowed  
20 as a deduction.

21 Q. Okay. At some point in time, did you  
22 learn that perhaps the IRS was not treating this  
23 \$7 million check as a payment, but rather treated  
24 it as a cash bond?

25 MR. EYRE: Objection. You asked him

1 does he know how it was treated internally?

2 MS. HALLETT: No. At some point in  
3 time, did he learn.

4 MR. EYRE: What they thought it was  
5 and how it was treated? That's two  
6 different things.

7 A. I learned how -- well, Mr. Saewitz  
8 had led me to believe that the posting of it was  
9 as posted as a payment of tax and interest and not  
10 a cash bond. Up until probably October of 1995, I  
11 believe, and we had a discussion earlier in 1995  
12 in February where we had made another payment and  
13 we realized that we had made an over-payment. Had  
14 an incorrect calculation in our numbers and we had  
15 made a payment of \$45 million in December of '94.  
16 And we asked if we could get some of that money  
17 back and Mr. Saewitz responded no because that was  
18 a payment of tax and interest and it was not a  
19 cash bond. He reiterated that you could only get  
20 monies back on a cash bond. You have to wait  
21 until the actual tax years are closed when you  
22 make a payment of tax and interest.

23 So even in February of '95, I  
24 believed that our 1990 payment would still be  
25 treated as a payment of tax and interest. And I

1 guess that the first inkling that I had that it  
2 may not be treated as such was we received an  
3 information document request in October of 1995  
4 requesting our work papers on how we handled the  
5 1990 portion that we designated as interest on the  
6 tax return and we did deduct that, and I gave -- I  
7 responded to that IDR and gave him a copy of the  
8 work paper which showed that we deducted that  
9 interest.

10 Q. Okay.

11 A. And I did not hear much from him on  
12 it until I guess that it was between that time and  
13 April of '96. In April, we received a Form 5701  
14 which was disallowing the interest expense. So I  
15 guess that I knew from his information document  
16 request that he had a problem with that or he was  
17 wondering about it, or he was, you know, he was  
18 investigating or examining the payment, but I  
19 didn't know until April of '96 that he was going  
20 to actually disallow it.

21 Q. Okay. Okay. Now, you had said that  
22 you had some discussion with Mr. Saewitz in  
23 February of 1995 regarding a December 1994  
24 payment?

25 A. Right.

1 Q. Amount of \$45 million that was made?

2 A. Yes.

3 Q. Now, during that discussion, at any  
4 time, did the December 31, 1990 payment ever come  
5 up?

6 A. No.

7 Q. Okay. So would it be correct to say  
8 that from December 31, 1990, up until the time  
9 that you received the information document request  
10 in October of 1995, that whole time period you  
11 thought that the IRS has treated the \$7 million as  
12 a payment and not as a cash bond?

13 A. That would be correct.

14 Q. Okay. Do you recall what point in  
15 time that it was that the 1986 liability had been  
16 determined?

17 MR. EYRE: Object to the form of the  
18 question. Do you mean when it was done,  
19 the audit?

20 MS. HALLETT: Whatever time that  
21 Scripps or the IRS came to some agreement  
22 to the '86 total liability.

23 A. I presume that you mean the  
24 settlement for the tax years 1985 through '87?

25 Q. If it was settled, yeah.



1           A.     That would be -- I believe it to be  
2     in May of 1997, I believe. I would have to double  
3     check on that to be totally sure.

4           Q.     Okay. At some point in time, did you  
5     realize that Scripps was not going to have an  
6     additional tax liability for the 1986 year?

7           A.     Yes.

8           Q.     Do you recall when that was?

9           A.     No, I don't.

10          Q.     Do you know if it was before May of  
11     1997?

12          A.     Well, I mean, until you reach a  
13     settlement, you don't know what your tax liability  
14     is going to be.

15          Q.     Okay.

16          A.     So I would say that I knew in May of  
17     1997 for sure.

18          Q.     Okay.

19          A.     I don't think that you could actually  
20     -- well, until we came to an agreement with the  
21     IRS, I would say that you could not determine  
22     that.

23          Q.     Okay. Okay. At any point in time,  
24     did Scripps ask for a return of the \$7 million?

25          A.     No. Well, let me think here. No, we

1 believed it to be a payment of tax and interest  
2 and until the years were closed, I mean, we didn't  
3 think that we could get the money back.

4 Q. Okay. After the year was closed, did  
5 Scripps ask for the money back?

6 A. It was refunded to us in the Fall of  
7 1997.

8 Q. Was it done by request of Scripps, do  
9 you know?

10 A. It was done because the case was  
11 closed and when they close the case, we basically  
12 settle up. I mean, if they owe us money they  
13 refund it with interest. If we owe them money we  
14 make a payment.

15 Q. Okay. The Exhibit Number 1, the  
16 December 22, 1988 letter, it refers to the  
17 \$9 million as a cash bond; is that correct?

18 A. Yes.

19 Q. Do you know why Scripps wanted to  
20 treat that \$9 million as a cash bond?

21 A. Stop the running of interest on -- to  
22 stop the running of interest.

23 Q. Okay. Were you involved with the  
24 decision to call it a cash bond or to make it a  
25 cash bond?

1 A. No, I was not.

2 Q. Okay. You said that it was the Fall  
3 of 1997 that Scripps received the \$7 million back?  
4 Is that what you said, \$7 million?

5 A. Well, we received whatever -- we  
6 received more money than that. I think that it  
7 was -- I don't remember the exact total, but it  
8 was more than \$7 million. It was for all of the  
9 years. It was for all of tax years '83 through  
10 1987.

11 Q. Okay. Did you prepare Scripps 1997  
12 tax return?

13 A. Did I prepare it? I prepared parts  
14 of it.

15 Q. Okay. Do you know if the 1997 return  
16 included \$1.5 million in interest for the return  
17 of the payment?

18 A. No, I don't. If I did know, I don't  
19 remember now. And I don't know.

20 Q. Okay. That's fine. Do you know when  
21 the IRS started the audit of the 1986 tax?

22 A. I don't remember the date or the -- I  
23 mean, I don't remember off-hand. I would be able  
24 to probably find out, I guess.

25 Q. Do you remember the year?

1           A.     We settled the '82 through '84 in May  
2 of 1991. But I don't know if the next cycle  
3 already had started or if it waited until we were  
4 done. That was at appeals.

5           MR. EYRE: If you do not remember,  
6 you don't remember.

7           A.     I don't remember the dates.

8           Q.     Do you know who the agent was in  
9 charge of the audit of the '86 year, the IRS  
10 agent?

11           MS. LUTZKO: Did you say for '86?

12           MS. HALLETT: Yes.

13           A.     Team coordinator?

14           Q.     Sure.

15           A.     That would be Sid Saewitz.

16           Q.     Okay.

17           A.     You said '85?

18           Q.     '86.

19           A.     Okay.

20           Q.     Audit of '85 and '86 done at the same  
21 time?

22           A.     Yes.

23           Q.     Okay.

24           A.     Could I add something?

25           Q.     Sure.

1           A.     Sid was on our job the better part of  
2     ten years. He started as George Imwalde's -- he  
3     moved into the team coordinator position, so  
4     everything just sort of over a ten-year period, he  
5     knew from being the -- moved from being the  
6     assistant on the job to being the team coordinator  
7     so that, you know, we have a ten-year history with  
8     Sid. Just to tell you some of the background --

9           Q.     Okay.

10          A.     -- to the case.

11          Q.     Okay.

12          A.     I don't know if that helps you or  
13     not.

14          Q.     Okay. It does. After you delivered  
15     the \$7 million check to the IRS and you saw the  
16     cash bond box checked on the posting voucher form,  
17     did you go back to your office and relay that fact  
18     to anybody in your office?

19          A.     Not that day. Mike was -- Michael  
20     Carroll, the Corporate Tax Director, was on  
21     vacation. And I believed Dan Castellini to be on  
22     vacation. That was part of my dilemma was whether  
23     to go through and finish the transaction with Sid  
24     as to how we had arranged it, or to take my check  
25     and go back to the office and then do, you know,

1 don't, you know, don't consummate the transaction.  
2 I guess that at that point I knew -- I could not  
3 ask for help at that point. I think that -- well,  
4 I think -- well, I don't know for sure that  
5 Mr. Castellini was on vacation, but I believed him  
6 to be.

7 So it was up to me to decide whether  
8 to go through with it the way that we had arranged  
9 it with Sid, then having the secretary type "tax  
10 adjustment plus interest" on it, and I guess that  
11 ultimately I relied upon Sid that he would be, you  
12 know, he was trustworthy as far as I was concerned  
13 up to that point, and I always felt, you know,  
14 that we could trust each other and I trusted him  
15 that when he said that it would be posted as a  
16 payment of tax and interest, I took him, you know,  
17 at his word.

18 MR. EYRE: Hold on a second. Could  
19 you read the question back? I'm not sure  
20 that you answered the question. I'm not  
21 sure. Could you ask the question again?

22 (The reporter read the question)

23 MR. EYRE: Yeah. That was the  
24 question that you were asked.

25 A. Not on that day.



1 Q. At some point in time, did you?

2 A. Yes.

3 Q. When was that?

4 A. Probably in January of 1991.

5 Q. Okay. Who did you speak to about  
6 this?

7 A. The Corporate Tax Director, Mike  
8 Carroll. I expressed my concerns with what had  
9 happened with the checking of the cash bond box  
10 and I told him that I told, you know, well,  
11 basically told the whole story, that what happened  
12 and I had emphasized with Mike that I reiterated  
13 to Sid numerous times that, you know, we were  
14 making a payment of -- our intent was to make a  
15 payment of tax and interest for the 1985 and 1986  
16 tax liabilities and the interest that accrued on  
17 those liabilities and, you know, I told him the  
18 whole story that Sid -- about the typing of the  
19 tax adjustment and interest on there, that Sid  
20 felt that our intent would clearly be shown that  
21 it was payment of tax and interest, not a cash  
22 bond.

23 Q. What was Mr. Carroll's reaction?

24 A. He was concerned. Maybe a little  
25 bit -- I don't know if he was mad, upset or

1 whatever, but he was concerned. He wanted the  
2 payment to represent, you know, our intention,  
3 which was to be a payment of tax and interest, not  
4 a cash bond. And he could not understand why Sid  
5 had to check that box. Part of my dealings with  
6 Sid is that I did say in part of our argument, I  
7 said, "why don't you just not check the box, just  
8 leave it blank?" And he said, "No, we can't do  
9 that. For collections to process it, one of these  
10 two boxes needs to be checked." I don't know  
11 what -- outside of that, I explained to Mike what  
12 had happened. I don't think that he was happy  
13 seeing the cash bond box checked, but he clearly  
14 stated the IRS knew what our intention was, which  
15 was to pay tax and interest for 1985 and '86.

16 Q. Did you show Mr. Carroll a copy of  
17 the posting voucher form?

18 A. Yes.

19 Q. Okay. Did he give you at that time  
20 any further instructions with regard to insuring  
21 that the \$7 million was posted as a payment and  
22 not as a cash bond at that point in time?

23 A. Not -- at some point we asked the IRS  
24 to give us a copy of our transcript, I guess. And  
25 I don't even know if that was related to this

1 whole thing, but any payment that we had was  
2 marked the same way. I think they called it an  
3 advance payment of an exam, advance payment on  
4 examination or something like that. So there was  
5 nothing to indicate that it was being treated as a  
6 cash bond, and we assumed that it was still being  
7 recognized, I guess, as a payment of tax and  
8 interest for those years.

9 Q. Okay. Would it be correct to say  
10 that you continued to think that until October of  
11 1995?

12 A. Yes.

13 Q. Okay. I would like to refer you to  
14 your affidavit, I believe that's Exhibit 47, page  
15 marked 259 at the bottom.

16 A. Yes.

17 Q. Okay. In the first full paragraph  
18 there, about three-quarters of the way down, you  
19 talked about a cash bond box or the section 316(c)  
20 box. Do you see that?

21 A. Yes.

22 Q. Okay. Does that section 316(c)  
23 referenced in your affidavit refer to the  
24 Government Exhibit 5 posting voucher that says  
25 "Send 316(c)"?

1           A.     Yes. I guess that's a typo. That  
2 should be Send 316(c).

3           Q.     Okay. Do you know what a 316(c) is?

4           MR. EYRE: Objection to the extent  
5 that your answer calls for any discussions  
6 that you had with me, okay?

7           You can't tell or you can't testify  
8 to something that you might have learned  
9 from me. Do you understand the difference?

10          If you learned independently of me,  
11 you could answer the question.

12          MS. HALLETT: He could testify if he  
13 knows what a 316(c) is.

14          A.     I don't want to answer this on the  
15 advice of my legal counsel.

16          MS. HALLETT: Is the objection  
17 attorney-client privilege?

18          MR. EYRE: Based upon attorney-client  
19 privilege, unless he had some prior  
20 knowledge as to what a 316(c) is.

21          MS. HALLETT: I disagree.

22          MR. EYRE: Okay.

23          Q.     In December 31 of 1990, did you know  
24 what a 316(c) was?

25          A.     No.

1 Q. Did you ask Mr. Saewitz?

2 A. No. He told me that that definitely  
3 did not apply, and I trusted him. well --

4 MR. EYRE: You answered the question.  
5 You answered the question.

6 Q. Did Mr. Saewitz tell you at any time  
7 that the cash bond box or the Send 316(c) box must  
8 be checked?

9 A. Yes. He told me that a box had to be  
10 checked in order for the collections department of  
11 the Internal Revenue Service to accept the payment  
12 and to post it to our transcript. without that,  
13 he could not process this transaction. He was  
14 going to hand me the check back.

15 MS. HALLETT: I don't have any  
16 further questions. I thank you for your  
17 time.

18 (Deposition concluded)

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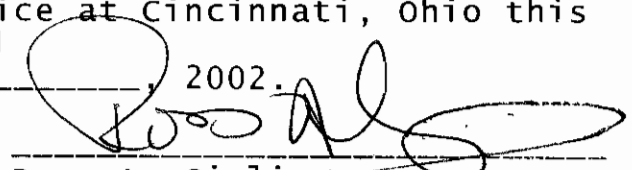
CERTIFICATE

E.W. SCRIPPS :  
: SS:  
UNITED STATES :

I, Ross A. Giglio, notary public in and for the State of Ohio, do hereby certify that before the giving of his deposition, the said JEROME HACKMAN was by me first duly sworn to testify the truth, the whole truth and nothing but the truth; that the foregoing deposition was given at said time and place by JEROME HACKMAN, to counsel herein set forth; that said deposition was taken in stenotypy by me, afterwards transcribed.

I do further certify that said deposition was submitted to the witness for examination and signature, and that I am not a relative, counsel or attorney to any party herein, or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I hereunto set my Hand and seal of office at Cincinnati, Ohio this 13<sup>th</sup> day of JAN, 2002.

  
\_\_\_\_\_  
Ross A. Giglio  
Notary Public - State of Ohio

My commission expires:  
April 29, 2004



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 19:6; 45:4, 8  
**worked** [2] 24:2,  
 4  
**working** [2]  
 5:19; 19:9  
**would** [84] 6:18,  
 24, 25; 7:10;  
 8:8; 12:21;  
 13:10, 12, 14;  
 14:4; 16:11, 20;  
 17:3, 25; 18:1, 7,  
 21; 19:4, 11, 19;  
 20:2, 6; 21:1;  
 22:1, 5, 18; 24:2;  
 25:13, 15, 20;  
 27:1, 5, 8, 22;  
 28:22; 29:9;  
 30:10, 13, 16, 19,  
 24, 25; 31:1, 3,  
 9, 21; 32:1, 8,  
 11, 13, 19;  
 33:17, 18, 24;  
 34:4, 17, 19, 21;  
 36:4; 38:1, 9, 12;  
 41:5, 24; 42:1, 3,  
 19; 43:2, 7;  
 44:24; 46:7, 13;  
 47:1, 2, 16, 21;  
 49:23; 50:15;  
 52:11, 15; 53:20;  
 55:9, 13  
**wouldn't** [1] 31:2  
**writing** [1] 33:12  
**written** [1] 37:9

- X -

x [1] 3:1

- Y -

**year** [21] 18:20;  
 19:3; 20:9; 22:6,  
 14, 16; 24:21;  
 26:1; 27:9, 23;  
 29:14; 30:9;  
 31:19, 23; 32:8;  
 35:25; 43:19;  
 47:6; 48:4;  
 49:25; 50:9  
**year-end** [4]  
 28:1; 33:19, 25;  
 34:5  
**yearly** [2] 26:24  
**years** [29] 4:20;  
 5:2, 24; 6:18;  
 11:23; 12:12, 23;  
 15:1, 11; 21:9;  
 23:5; 25:2;  
 26:19; 27:1;  
 28:1, 25; 30:11;

32:3; 36:8;  
 40:24; 44:21;  
 46:24; 48:2;  
 49:9; 51:2; 55:8  
**you're** [1] 28:4  
**your** [33] 4:7, 9,  
 21; 5:3, 7, 20;  
 7:14; 8:13; 9:17;  
 14:5, 10; 15:3, 5;  
 16:17, 18; 17:4,  
 22; 18:14, 17;  
 23:14; 24:7;  
 27:24; 30:7;  
 33:8, 12; 37:18;  
 47:13; 51:17, 18;  
 55:14, 23; 56:5;  
 57:16

NEW CENTRAL TRUST  
PO BOX 4380  
CINCINNATI OHIO 45201  
613 977-8662

INVESTMENT BANKING  
CORPORATE TAX DEPARTMENT



SCRIPPS  
HOWARD

December 22, 1988

Mr. Jack R. Elliott  
Case Manager  
Internal Revenue Service  
P. O. Box 476  
Cincinnati, Ohio 45201

re: The E. W. Scripps Company & Subsidiaries  
E.I.N. #34-0517805

Dear Jack:

As we have discussed previously, The E. W. Scripps Company and subsidiaries' desire to post a cash bond with the Internal Revenue Service to in effect prepay and thereby stop the interest accumulation on the 1982-84 adjustments anticipated as a result of our recent settlement with the Internal Revenue Service, which changed our method of reporting from the cash method to the accrual method as of 1980.

This cash bond is being hand-delivered with this authorization letter by our Jerome P. Hackman to your Team Coordinator, George B. Imwalle on Thursday, December 22, 1988, is in the amount of \$9,000,000, and covers the following years now under audit:

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>TOTAL</u>
Tax adjustment	\$3,000,000	\$ 0	\$2,500,000	\$5,500,000
Interest Thereon	<u>2,500,000</u>	<u>0</u>	<u>1,000,000</u>	<u>3,500,000</u>
	<u>\$5,500,000</u>	<u>\$ 0</u>	<u>\$3,500,000</u>	<u>\$9,000,000</u>

Please have the duplicate copy of this letter date-stamped and given to Mr. Hackman as our evidence of the Internal Revenue Service's receipt of this cash bond.

Thank you for your cooperation in this matter.

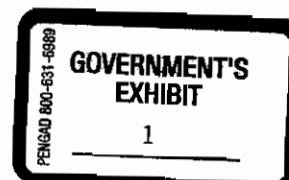
Sincerely,

*Michael W. Carroll*

MICHAEL W. CARROLL  
Corporate Tax Director

MWC/mah  
Enc. 1 - Letter for receipt purposes

SCRIPPS 00020



1100 CENTRAL TRUST TOWER  
P.O. BOX 5380  
CINCINNATI, OHIO 45201  
513 977-3862

MICHAEL W. CARROLL  
CORPORATE TAX DIRECTOR



SCRIPPS  
HOWARD

December 31, 1990

Mr. Sidney S. Saewitz  
Internal Revenue Agent  
Internal Revenue Service  
P. O. Box 476  
Cincinnati, Ohio 45201

re: The E. W. Scripps Company & Subsidiaries  
E.I.N. 34-0517805

Dear Sid:

As we have discussed previously, The E. W. Scripps Company and subsidiaries' desire to prepay and thereby stop the interest accumulation on the 1985-86 adjustments anticipated as a result of our previous settlement with the Internal Revenue Service, which changed our publishing affiliates' method of reporting from the cash method to the accrual method as of 1980.

Our check for \$7,000,000 is being hand-delivered with this authorization letter by our Jerome P. Hackman to you today. It covers the following years now under audit:

	<u>1985</u>	<u>1986</u>	<u>TOTAL</u>
Tax Adjustment	\$2,000,000	\$2,000,000	\$4,000,000
Interest Thereon	<u>1,500,000</u>	<u>1,500,000</u>	<u>3,000,000</u>
	\$3,500,000	\$3,500,000	\$7,000,000
	=====	=====	=====

Please have the duplicate copy of this letter date-stamped and given to Mr. Hackman as our evidence of the Internal Revenue Service's receipt of this payment.

Thank you for your cooperation in this matter.

Sincerely,

MICHAEL W. CARROLL  
Corporate Tax Director

MWC/mah

Enc. 1 - Letter for receipt PURPOSES

RECEIVED  
EXAMINATION DIVISION

DEC 31 1990

ENC



82-4  
311  
Mellon Bank (East) N.A., Philadelphia, PA  
Payable through Mellon Bank (DE) N.A., Wilmington, DE

0901062828

7,000,000.00

VOID IF NOT PRESENTED WITHIN  
90 DAYS FROM DATE

BY: *[Signature]*  
*[Signature]*

P.O. BOX 5380  
CINCINNATI, OHIO 45201  
613 877-3000

RECEIVED  
EXAMINATION DIVISION

DEC 31 1990

DIST. DIR. INT. REVENUE  
CINCINNATI, OHIO

SCRIPPS  
HOWARD

DECEMBER 31, 1990

PAY TO THE ORDER OF

INTERNAL REVENUE SERVICE

⑆0901062828⑈ ⑆031100047⑆ 2⑈925 584⑈

FORM 1

**Payment Posting Voucher—  
Examination**  
*Not a taxpayer receipt*

N M F	U L C	DLN	SSN/EIN	Form number/ MFT	Tax period	Transaction date
		Status	34-0517805	1120/02	8612	12-31-90

Taxpayer name, address, and ZIP code

3. W. Scripps Co.  
1100 Central Trust Tower Cincinnati, OH 45202

List, in the column below, payments to be posted to the taxpayer's account. A maximum of two *Credit* transactions may be shown.

Remarks

List, in the column below, any Debit amount to be assessed. A maximum of one *Debit* transaction may be shown.

Tax Adj. 2,000,000  
Interest 1,500,000  
3,500,000

RECEIVED

DEC 31 1990

DIRECTOR INT REV  
CINCINNATI
☒ Cash bond ☐ Send 316(C)

## Transaction Data

Amount	Code	Description
	170	ES penalty
	180	FTD penalty
	360	Fees and collection cost
	570	Additional liability pending
		Other debit
		Other debit

Amount	Code	Description
	670	Subsequent payment
	610	Remittance with return
	620	Payment for 7004
3,500,000	640	Advance payment on deficiency
	430	All other est. tax payments
	660	706-ES
	680	Designated interest
		Other credit
3,500,000		Total payment

Prepared by (Name and unit symbol)

S. SAEWITZ, RA 1104, DO 31 Room 4504 FOB X2356

Form **3244-A** (Rev. 6-85)  
Dispose of all prior issues

Part 2

(Duplicate copy—do not process)

Department of the Treasury  
Internal Revenue Service

**Payment Posting Voucher—  
Examination**  
*Not a taxpayer receipt*

N M F	U L C	DLN	SSN/EIN	Form number/ MFT	Tax period	Transaction date
		Status	34-0517805	1120/02	8512	12-31-90

Taxpayer name, address, and ZIP code

E.W. Scripps Co  
1100 Central Trust Tower, Cincinnati, OH 45202

List, in the column below, payments to be posted to the taxpayer's account. A maximum of two *Credit* transactions may be shown.

Remarks

List, in the column below, any Debit amount to be assessed. A maximum of one *Debit* transaction may be shown.

Tax Adj. 2,000,000  
Interest 1,500,000  
3,500,000

RECEIVED

DEC 31 1990

DIRECTOR INT REV  
CINCINNATI
☒ Cash bond ☐ Send 316(C)

## Transaction Data

Amount	Code	Description
	170	ES penalty
	180	FTD penalty
	360	Fees and collection cost
	570	Additional liability pending
		Other debit
		Other debit

Amount	Code	Description
	670	Subsequent payment
	610	Remittance with return
	620	Payment for 7004
3,500,000	640	Advance payment on deficiency
	430	All other est. tax payments
	660	706-ES
	680	Designated interest
		Other credit
3,500,000		Total payment

Prepared by (Name and unit symbol)

S. Saewitz, RA1104 DO31 Room 4504 FOB X2356

Form **3244-A** (Rev. 6-85)

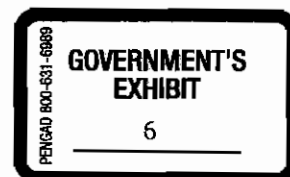
Part 2

Department of the Treasury

GOVERNMENT'S  
EXHIBIT



Form 1120		U.S. Corporation Income Tax Return		COPY		1986	
Department of the Treasury Internal Revenue Service		For calendar 1986 or tax year beginning ending		For Paperwork Reduction Act Notice, see page 1 of the instructions.		1986	
Check if a - <input checked="" type="checkbox"/> A. Constituted under the laws of the United States <input type="checkbox"/> B. Personal Holding Co. <input type="checkbox"/> C. Business Code No. (See the list in the instructions) 6749		Name THE E. W. SCRIPPS CO. (PARENT) (CONSOLIDATED) Number and street P. O. BOX 5380 City or town, state, and ZIP code CINCINNATI, OHIO 45201		Employer identification number 34-0517805 Date incorporated 06/22/22 Total assets (see Specific instructions) 1,977,010,809.			
G. Check box if there has been a change in address from the previous year <input checked="" type="checkbox"/>		1 Gross receipts or sales 884,399,981. Less returns and allowances Balance 884,399,981.		1c 884,399,981.			
2 Cost of goods sold and/or operations (Schedule A)		2 49,785,333.		2 49,785,333.			
3 Gross profit (line 1c less line 2)		3 834,614,648.		3 834,614,648.			
4 Dividends (Schedule D)		4 60,449,182.		4 60,449,182.			
5 Interest SEE STATEMENT 19		5 8,313,708.		5 8,313,708.			
6 Gross rents		6 783,569.		6 783,569.			
7 Gross royalties		7 40,813,704.		7 40,813,704.			
8 Capital gain net income (attach separate Schedule D)		8 628,755.		8 628,755.			
9 Net gain or (loss) from Form 4797, line 17, Part II (attach Form 4797)		9 -2,620,872.		9 -2,620,872.			
10 Other income (see instructions - attach schedule) SEE STATEMENT 30		10 -83,139,566.		10 -83,139,566.			
11 TOTAL income - Add lines 3 through 10 and enter here		11 879,663,128.		11 879,663,128.			
12 Compensation of officers (Schedule D)		12 2,588,626.		12 2,588,626.			
13a Salaries and wages 285,085,023. b Less jobs credit Balance 285,085,023.		13c 285,085,023.		13c 285,085,023.			
14 Repairs		14 8,807,627.		14 8,807,627.			
15 Bad debts (Schedule F if reserve method is used)		15 2,128,551.		15 2,128,551.			
16 Rents		16 16,499,021.		16 16,499,021.			
17 Taxes SEE STATEMENT 38		17 36,387,019.		17 36,387,019.			
18 Interest		18 34,606,486.		18 34,606,486.			
19 Contributions (see instructions for 10% limitation) SEE STATEMENT 58		19		19			
20 Depreciation (attach Form 4562) 20 44,404,724.		20 44,404,724.		20 44,404,724.			
21 Less depreciation claimed in Schedule A and elsewhere on return 21a 1,149,949.		21b 43,254,775.		21b 43,254,775.			
22 Depletion		22		22			
23 Advertising		23 13,494,119.		23 13,494,119.			
24 Pension, profit-sharing, etc., plans		24 17,231,917.		24 17,231,917.			
25 Employee benefit programs		25 22,021,514.		25 22,021,514.			
26 Other deductions (attach schedule) SEE STATEMENT 7&		26 420,051,544.		26 420,051,544.			
27 TOTAL deductions - Add lines 12 through 26 and enter here		27 882,156,222.		27 882,156,222.			
28 Taxable income before net operating loss deduction and special deductions (line 11 less line 27)		28 -2,493,094.		28 -2,493,094.			
29 Less: a Net operating loss deduction (see instructions) 29a		29a		29a			
b Special deductions (Schedule O) 29b 60,062,301.		29c 60,062,301.		29c 60,062,301.			
30 Taxable income (line 28 less line 29c)		30 -62,555,395.		30 -62,555,395.			
31 TOTAL TAX (Schedule J)		31 1,477,277.		31 1,477,277.			
32 Payments: a 1985 overpayment credited to 1986		32 1,500,000.		32 1,500,000.			
b 1986 estimated tax payments 1,500,000.		32 1,500,000.		32 1,500,000.			
c Less 1986 refund applied for on Form 4466		32 NONE		32 NONE			
d Tax deposited with Form 7004		32		32			
e Credit from regulated investment companies (attach Form 2439)		32		32			
f Credit for Federal tax on gasoline and special fuels (attach Form 4136)		32		32			
33 Enter any PENALTY for underpayment of estimated tax--check <input type="checkbox"/> if Form 2220 is attached		33		33			
34 TAX DUE--If the total of lines 31 and 33 is larger than line 32, enter AMOUNT OWED		34		34			
35 OVERPAYMENT--If line 32 is larger than the total of lines 31 and 33, enter AMOUNT OVERPAID		35 22,723.		35 22,723.			
36 Enter amount of line 35 you want: Credited to 1987 estimated tax 22,723. Refunded		36		36			
Please Sign Here		Under penalties of perjury, I declare that I have prepared this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		05/18/87 SR. VICE PRESIDENT			
Preparer's signature		D. J. CASTELLINI		Date			
Paid Preparer's Use Only		Firm's name (or yours, if self-employed) and address		Check if self-employed <input type="checkbox"/> E.I. No. ZIP code			





05/18/87 34-051 /5

THE F. W. SCRIPPS CO. (PARENT) (CONSOLIDATED)

Form 1120 (1986)

Page 2

**Schedule A Cost of Goods Sold and/or Operations** (See instructions for line 2, page 1)

1 Inventory at beginning of year	1	7,007,111.
2 Purchases	2	36,725,076.
3 Cost of labor	3	6,229,917.
4 Other costs (attach schedule)	4	5,293,163.
5 Total - Add lines 1 through 4	5	55,255,267.
6 Inventory at end of year	6	5,489,934.
7 Cost of goods sold and/or operations - Line 5 less line 6. Enter here and on line 2, page 1	7	49,765,333.

8 a Check all methods used for valuing closing inventory:

- (i) ☐ Cost (ii) ☐ Lower of cost or market as described in Regulations section 1.471-4 (see instructions)  
 (iii) ☐ Writedown of "subnormal" goods as described in Regulations section 1.471-2(c) (see instructions)  
 (iv) ☐ Other (Specify method used and attach explanation) ▶

b Check if the LIFO inventory method was adopted this tax year for any goods (If checked, attach Form 970) ☐

c If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 8c

d If you are engaged in manufacturing, did you value your inventory using the full absorption method (Regulations section 1.471-11)? ☐ Yes ☐ Noe Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☐ No  
If "Yes," attach explanation.**Schedule C Dividends and Special Deductions**  
(See Schedule C instructions)

	(a) Dividends received	(b) %	(c) Special deductions: multiply (a) X (b)
1 Domestic corporations subject to section 243(a) deduction (other than debt-financed stock) STMT 133	2,579,208.	see instructions	2,192,327.
2 Debt-financed stock of domestic and foreign corporations (section 245A)		see instructions	
3 Certain preferred stock of public utilities		see instructions	
4 Foreign corporations and certain FSCs subject to section 245 deduction		see instructions	
5 Wholly-owned foreign subsidiaries and FSCs subject to 100% ded. (sections 245(b) and (c))		100	
6 Total - Add lines 1 through 5. See instructions for limitation			2,192,327.
7 Affiliated groups subject to the 100% deduction (section 245(c)(3)) STMT 142	57,869,974.	100	57,869,974.
8 Other dividends from foreign corporations not included in lines 4 and 5			
9 Income from controlled foreign corporations under subpart F (attach Forms 5471)			
10 Foreign dividend gross-up (section 78)			
11 IC-DISC or former DISC dividends not included in lines 1 and/or 2 (sec. 245(d))			
12 Other dividends			
13 Deduction for dividends paid on certain preferred stock of public utilities (see instructions)			
14 Total dividends - Add lines 1 through 12. Enter here and on line 4, page 1 ▶	60,449,182.		
15 Total deductions - Add lines 6, 7 and 13. Enter here and on line 29b, page 1 ▶			60,062,301.

**Schedule E Compensation of Officers** (See instructions for line 12, page 1)

Complete Schedule E only if total receipts (line 1a, plus lines 4 through 10, of page 1, Form 1120) are \$150,000 or more.

(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	(d) Percent of corporation stock owned	(e) Amount of compensation
SEE STATEMENT 143		%	%	%
		%	%	%
		%	%	%
		%	%	%
		%	%	%
		%	%	%
		%	%	%
		%	%	%

Total compensation of officers - Enter here and on line 12, page 1 2,588,626.

**Schedule F Bad Debts - Reserve Method** (See instructions for line 15, page 1)

(a) Year	(b) Trade notes and accounts receivable outstanding at end of year	(c) Sales on account	(d) Amount added to reserve		(e) Amount charged against reserve	(f) Reserve for bad debts at end of year
			(i) Current year's provision	(ii) Recoveries		
1981	6,701,571.	41,588,473.	311,406.	60,867.	269,275.	413,939.
1982	8,629,843.	56,409,289.	863,454.	24,678.	852,585.	649,486.
1983	14,577,358.	79,949,893.	1,124,981.	104,869.	790,575.	1,088,761.
1984	15,663,629.	77,708,416.	1,228,100.	7,596.	891,710.	1,432,747.
1985	17,792,528.	89,003,838.	1,428,767.	44,892.	1,264,261.	1,642,145.
1986	27,306,086.	107,039,001.	2,128,551.	170,054.	2,433,316.	1,507,434.

Page 3

**Schedule D**601130 1.000



05/18/87 34-051 05

THE E. W. SCHLES CO. (AGENT) (CONSOLIDATED)

Form 1120 (1986)

Page 4

**Schedule L Balance Sheets**

Assets	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
1 Cash		20,435,133.		8,384,737.
2 Trade notes and accounts receivable	66,946,237.		70,445,229.	
a Less allowance for bad debts	2,439,681.	64,506,556.	2,329,487.	68,115,736.
3 Inventories		7,948,527.		6,679,709.
4 Federal and state government obligations				
5 Other current assets (attach schedule)	STMT 229	177,420,034.		71,575,195.
6 Loans to stockholders		5,597,746.		4,289,709.
7 Mortgage and real estate loans				
8 Other investments (attach schedule)	STMT 235	224,894,645.		492,156,773.
9 Buildings and other depreciable assets	374,266,491.		399,434,555.	
a Less accumulated depreciation	211,925,700.	162,340,791.	214,985,616.	184,448,939.
10 Depletable assets				
a Less accumulated depletion				
11 Land (net of any amortization)		24,179,765.		32,688,908.
12 Intangible assets (amortizable only)	172,822,431.		441,459,268.	
a Less accumulated amortization	99,146,777.	133,675,654.	74,644,422.	366,814,846.
13 Other assets (attach schedule)	STMT 245	203,758,953.		741,856,257.
14 Total assets		1,024,755,804.		1,977,010,809.
<b>Liabilities and Stockholders' Equity</b>				
15 Accounts payable		23,571,006.		22,851,332.
16 Mpes., notes, bonds payable in less than 1 year		29,625,717.		27,391,660.
17 Other current liabilities (attach schedule)	STMT 263	84,348,093.		88,158,974.
18 Loans from stockholders	STMT 280	141,152,926.		447,763,682.
19 Mpes., notes, bonds payable in 1 year or more		96,873,430.		595,310,095.
20 Other liabilities (attach schedule)	STMT 289	45,562,437.		90,482,033.
21 Capital stock: a Preferred stock	639,500.		245,350.	
b Common stock	19,418,164.	20,057,664.	18,957,833.	19,203,183.
22 Paid-in or capital surplus	STMT 295	226,808,425.		370,653,509.
23 Retained earnings - Appropriated (attach schedule)				
24 Retained earnings - Unappropriated		373,154,021.		329,970,331.
25 Less cost of treasury stock		( 16,397,915.)		( 14,773,990.)
26 Total liabilities and stockholders' equity		1,024,755,804.		1,977,010,809.

**Schedule M-1 Reconciliation of Income per Books With Income per Return**

Do not complete this schedule if the total assets on line 14, column (d), of Schedule L are less than \$25,000.

1 Net income per books	28,458,931.	7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax	-6,411,136.	a Tax-exempt interest	457,567.
3 Excess of capital losses over capital gains		SEE STATEMENT 340	1,284,043.
4 Income subject to tax not recorded on books this year (itemize)	SEE STATEMENT 327		
5 Expenses recorded on books this year not deducted in this return (itemize)	-13,913,201.	8 Deductions in this tax return not charged against book income this year (itemize)	
a Depreciation	30,890.	a Depreciation	3,082,507.
b Contributions carryover	2,628,960.	b Contributions carryover	14,700,970.
SEE STATEMENT 331	6,237,549.	SEE STATEMENT 355	
6 Total of lines 1 through 5	17,031,993.	9 Total of lines 7 and 8	19,525,087.
		10 Income (line 28, page 1) - line 6 less line 9	-2,493,094.

**Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (line 24, Schedule L)**

Do not complete this schedule if the total assets on line 14, column (d), of Schedule L are less than \$25,000.

1 Balance at beginning of year	373,154,021.	5 Distributions: a Cash	76,181,917.
2 Net income per books	28,458,931.	b Stock	
3 Other increases (itemize)		c Property	
		6 Other decreases (itemize)	
		SEE STATEMENT 368	4,026,270.
SEE STATEMENT 363	8,565,566.	7 Total of lines 5 and 6	80,208,187.
4 Total of lines 1, 2, and 3	410,178,518.	8 Balance at end of year (line 4 less line 7)	329,970,331.

THE E. W. SCRIPPS COMPANY  
P.O. BOX 5380  
CINCINNATI, OHIO 45201  
312 WALNUT STREET, SUITE 2800  
CINCINNATI, OHIO 45202

JOSEPH M. CARROLL  
CORPORATE TAX DIRECTOR

PHONE (513) 977-3090  
FAX (513) 977-3090  
E-MAIL carroll@scripps.com



**SCRIPPS**

**RECEIVED**

August 6, 1999

**AUG 11 1999**

**APPEALS OFFICE  
CINCINNATI, OHIO  
INTERNAL REVENUE SERVICE**

Mr. Richard A. O'Connor  
Appeals Officer  
IRS Appeals Office  
312 Elm Street  
Room 2330  
Cincinnati, OH 45202

RE: The E. W. Scripps Company

Dear Rick:

This letter, which supplements my letter dated March 31, 1999, includes Jerome P. Hackman's affidavit and my affidavit. The affidavits evidence that The E. W. Scripps Company's intent was to make a payment of a tax liability and interest thereon (not a cash bond) on December 31, 1990. The affidavits support my letter dated December 31, 1990 which explicitly stated the Company's intent to pay the "1986 adjustments anticipated as a result of our previous settlement with the Internal Revenue Service, which changed our publishing affiliates' method of reporting from the cash method to the accrual method as of 1980". The check hand delivered with the letter (as stated in the letter) was intended to pay (among other things) \$2,000,000 increased tax liability (plus \$1,500,000 interest) for the Company's 1986 taxable year.

It is clear under the authorities set forth in my letter dated March 31, 1999 and herein that the December 31, 1990 remittance was a payment of tax (plus interest) and that the

PARENT OF THE SCRIPPS HOWARD MEDIA COMPANIES



Mr. Richard A. O'Connor  
 August 6, 1999  
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Company is entitled to interest in excess of \$2,245,212 on the amount it paid to the Internal Revenue Service on December 31, 1990 with respect to 1986.

My letter dated December 30, 1990 specifically designated the \$3,500,000 remittance as a payment for 1986 of \$2,000,000 tax adjustment plus \$1,500,000 interest thereon, not a cash bond. In Ameel v. Comm., 426 F.2d 1270 (6<sup>th</sup> Cir. 1970), the Sixth Circuit, the Court which has jurisdiction over the Company, held that a remittance made "in response to a proposed deficiency asserted by the Government. . . and made by Appellant [taxpayer] intended to satisfy a proposed deficiency and discharge any further tax liability. . ." was a payment of tax. Like the remittance in Ameel, the Company's remittance was made to carry out its agreement with the Internal Revenue Service on Form 870-AD to switch its publishing affiliates from the cash to the accrual method of accounting and, when paid, was paid with the intent to discharge the Company's tax liability. The Sixth Circuit's decision in Ameel is unequivocal support for the claim for refund (as more fully described in my letter dated March 31, 1999).

It is clear from Ewing v. U.S., 914 F.2d 499 (4<sup>th</sup> Cir. 1990) and Moran v. U.S., 63 F.3d 663 (7<sup>th</sup> Cir. 1995) that formal assessment of tax is unnecessary. What is important is the taxpayer's intent to discharge its tax liability. The Company remitted the tax (plus interest) with the intent of discharging its tax liability. My letter dated December 31, 1990 explicitly states that intent. Further, Jerry Hackman's affidavit and my affidavit both evidence the Company's intent. The Company intended to pay the tax and, as reflected in Jerry Hackman's affidavit and my affidavit, directly communicated that intent to Internal Revenue Service Agent Sidney S. Saewitz. Agent Saewitz's checking a box on an Internal Revenue Service form which the taxpayer had

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never seen before can only be viewed as inadvertent error. It was inconsistent with the taxpayer's intent.

In addition to Jerry Hackman's affidavit (which includes our calculation of the tax due for 1986) and my affidavit, I am enclosing a copy of my earlier letter dated March 31, 1999. I believe our affidavits and the authorities cited in my letter support the Company's position. I would be pleased to discuss this issue with you further if any questions remain as to your allowance of the Company's claim in full.

Very truly yours,

  
Michael W. Carroll

cc: Castellini, Hackman, Toomajian



**AFFIDAVIT**

I, Michael W. Carroll, am the Corporate Tax Director of The E. W. Scripps Company (the "Company") and have been employed in the tax department of the Company since June 11, 1979.

With the approval of the Company's Senior Vice President/Finance and Administration, Daniel J. Castellini, I authorized the Company's \$7,000,000 remittance made on December 31, 1990 of the Company's additional 1985 and 1986 consolidated federal income taxes, and the related interest, that the Company believed it owed as the result of the Company's agreement with the Internal Revenue Service ("IRS") on the Form 870-AD dated June 16, 1988 to change its publishing affiliates' method of accounting from the cash method to the accrual method as of the tax year 1990. My transmittal letter, dated December 31, 1990 to IRS Agent Sidney S. Saewitz, the IRS Audit Team Coordinator of the ongoing audit of the Company's 1985-1987 consolidated income tax returns, clearly indicated to the IRS that the Company's intent was to pay \$2,000,000 in additional 1985 tax, \$2,000,000 in additional 1986 tax, \$1,500,000 in interest on the additional 1985 tax, and \$1,500,000 in interest on the additional 1986 tax.

The June 16, 1988 Form 870-AD agreement bound the Company to change its publishing affiliates' method of accounting from the cash method to the accrual method for tax reporting purposes. In conjunction with that agreement and the closing of the Company's tax years through 1984, the additional tax and interest owed through the Company's 1984 tax year was assessed and paid. Although the IRS audit of the Company's returns for the years 1985, 1986 and 1987 began in early 1990, the additional

tax and interest owed for 1985 and 1986 as a result of the Form 870-AD agreement had not yet been calculated. The Company anticipated a significant additional tax liability for 1985 and 1986 due to this agreement, and wanted to pay what it owed as soon as possible. I asked Agent Saewitz to calculate the amount of additional 1985 and 1986 tax due as a result of this agreed method change so that the Company could pay the additional tax plus interest thereon before the end of 1990. He told me that he would not be able to complete this complex calculation by then. I then told him that the Company wanted to pay most of what it would owe in 1990, in order to both stop the accruing of interest on this known and agreed tax adjustment and also to deduct the payment of the interest on its 1990 return. We undertook the task of determining the additional tax and interest that the Company would owe and to pay it by year-end. Agent Saewitz offered to help submit the payment to the IRS.

The adjustments as a result of the July 16, 1988 Agreement through the Company's 1984 tax year had already been determined, assessed and paid and the Company had already filed its 1987 return using the accrual method of accounting. I instructed Jerome P. Hackman of my staff to calculate the additional tax the Company owed for 1985 and 1986 so that the Company could pay the additional tax and the related interest that it owed. We also researched how to make this payment of tax deficiency and related interest so that it would be treated by the IRS as a payment of tax and interest, and not as a cash bond, so that the Company could properly deduct the interest paid on its 1990 tax return. My transmittal letter that accompanied the Company's payment clearly identified it as a payment of additional tax and the related interest for the tax years 1985

and 1986. It did not request that this payment be treated as a deposit in the nature of a cash bond.

Because I was vacation on December 31, 1990, I asked Mr. Hackman to deliver the Company's \$7,000,000 payment, along with my transmittal letter, to the IRS Collections Department. When I returned from vacation early in 1991, Mr. Hackman advised me of his concern that Agent Saewitz, who had accompanied Mr. Hackman to IRS Collections, may have processed the Company's payment incorrectly, despite knowing that the intent was for this payment to be an payment of additional tax and related interest and not a cash bond. He told me that he raised this concern with Agent Saewitz at the time the payment was processed, and that Agent Saewitz had assured him that the payment would be posted and treated by the IRS as the Company intended, as an payment of tax and interest, just as I had designated it to be treated in my transmittal letter. He also assured him that the prepaid interest would be allowed as a 1990 tax deduction.

This December 31, 1990 payment was, in fact, posted to the Company's account as an Advance Payment of Exam Deficiency. We were able to confirm this on Account Transcripts which we later obtained for both tax years. We were therefore confident that the Company's payment had been properly treated by the IRS as intended, as an advance payment of additional 1985 and 1986 taxes owed and the related interest, which was deductible in 1990 the year in which it was paid.

In early 1995, Agent Saewitz informed me that our December 31, 1990 payments were treated as payments of tax and interest, and not as cash bonds. He assured me that the Company would receive interest on any of the monies that were refunded. We were

satisfied with his conclusion. We later learned that he then asked to have an IRS attorney research the issue further and confirm his conclusion.

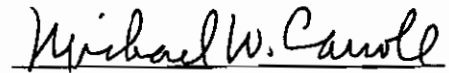
On October 5, 1995 an Information Document Request was issued asking the Company to provide support for its 1990 deduction of the interest paid on December 31, 1990. Sometime after this and prior to the April 9, 1996 issuance of the proposed adjustment to disallow the Company's 1990 deduction of this interest, Agent Saewitz made it known to me that he had reversed his position on the December 31, 1990 payment of tax and interest and that it was now his opinion that it should be treated as a cash bond instead. He told me that the Company was not entitled to deduct the interest portion of it in 1990. He also told me that any amounts refunded to the Company would not be entitled to interest. I strongly objected to his recharacterization of the December 31, 1990 payment of tax and interest as a cash bond, especially as Agent Saewitz clearly knew that the Company's intent was for this payment to be an payment of tax and interest, and not to be a cash bond deposit. I reminded him that if the payment had been processed improperly that it was due to his handling of the payment voucher, which Mr. Hackman objected to when he prepared it, and that Agent Saewitz had assured him that the payment would be treated by the IRS as the Company had intended, as a payment of additional 1985 and 1986 tax and deductible interest.

On September 11, 1997 after the Company and the IRS had settled its tax years 1985, 1986 and 1987, the Company received a refund of the \$3,500,000 for the 1986 tax year without interest. Subsequently, on January 22, 1998 the Company and the IRS reached an exam settlement of all proposed IRS adjustments for tax years 1988-1991. In

this agreement, the IRS allowed the Company's 1990 deduction of the interest that it had paid on December 31, 1990.

On September 28, 1998 the Company filed its claim, requesting the interest to which it is entitled on the \$3,500,000 that was refunded to it, as this money was clearly intended to be a payment of tax and interest, just as the IRS posted it and treated it for years.

Under penalties of perjury, I state and swear that this statement is true, correct and complete, to the best of my knowledge and belief.

A handwritten signature in black ink that reads "Michael W. Carroll". The signature is written in a cursive style and is positioned above a solid horizontal line.

Michael W. Carroll



# AFFIDAVIT

I, Jerome P. Hackman, am Tax Manager-Federal Audits of The E.W. Scripps Company (the "Company") and have been employed in the tax department of the Company since June 16, 1984.

On December 31, 1990, I hand delivered to the Internal Revenue Service Exam Division at its office on 550 Main Street, Cincinnati, Ohio, the Company's check dated December 31, 1990 in the amount of \$7,000,000 to the Internal Revenue Service ("IRS"). The \$7,000,000 check was attached to a letter dated December 31, 1990 from Michael W. Carroll, the Corporate Tax Director of the Company, to Internal Revenue Agent Sidney S. Saewitz, which letter specifically designated \$3,500,000 of the \$7,000,000 as payment of \$2,000,000 of tax (plus \$1,500,000 interest thereon) for 1986.

The \$7,000,000 remittance was intended to pay additional tax (plus interest thereon) that the Company calculated it owed for its 1985 and 1986 taxable years as a result of the Company's agreement with the IRS on Form 870-AD dated June 16, 1988 to change its publishing affiliates' method of accounting from the cash to accrual method.

In December 1990 Michael W. Carroll made the decision to make the payment to the IRS to satisfy the additional tax (plus interest thereon) for 1985 and 1986 resulting from the June 16, 1988 agreement with the Internal Revenue Service to change the Company's publishing affiliates' method of accounting from the cash to accrual method. The payment was intended not only to stop future interest accumulation on the additional 1985 and 1986 tax, but also to be deductible in 1990, to the extent of the portion designated as interest.

I calculated the additional 1985 and 1986 "cash to accrual switch" tax (plus the interest thereon). To calculate the additional tax I prepared a schedule of "Cash to Accrual Adjustments" on a cumulative basis comparing the December 31, 1986 Cash to Accrual Balance Sheets. A net cumulative Section 481(a) adjustment was computed by subtracting the Section 481(a) liabilities from Section 481(a) assets. Attached as an example is a copy of Denver Publishing's "Cash to Accrual Adjustments" schedule. The cash to accrual adjustments for tax years 1981 through 1984 had been computed by the Internal Revenue Service and agreed to by the Company prior to December 31, 1990. Therefore, I calculated the amount of tax and interest liability as of December 31, 1990. The amount of \$16,140,533 represented the total Section 481(a) adjustments for the two-year period of 1985 and 1986 for the newspaper affiliates. As the schedule labeled, "Cash to Accrual Adjustment For All Scripps Howard Newspapers & United Feature Syndicate From 1/1/82 to 1/1/87 By Year and Cumulative To 1/1/82" indicates, I multiplied the total 1985 and 1986 Section 481(a) adjustment by the 46% corporate tax rate to calculate an additional tax liability of \$7,424,645 for 1985 and 1986. I allocated the additional tax liability equally between the two tax years. I then calculated interest that would be due on this tax liability and included tax liabilities resulting from years 1982 through 1984 less an earlier Company remittance of \$5,500,000. Total tax of \$26,456,637 remained and I calculated interest on this amount to be \$3,306,263. The total tax and interest liability was \$9,782,000. Since the Company did not want to overpay on its liability, and as my calculation of it relied on many complex calculations done by various people in the Tax Department and the IRS, the Company



decided to round the tax and interest numbers down to a total of \$7,000,000 split equally between years 1985 and 1986.

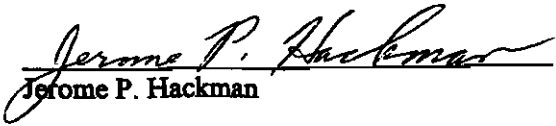
Mr. Carroll was on vacation, so I was assigned the task of hand delivering the \$7,000,000 payment of tax and interest along with his transmittal letter. On December 31, 1990 Agent Saewitz and I walked to the IRS office. When we arrived there, Agent Saewitz stamped Mr. Carroll's transmittal letter and the \$7,000,000 check as received on December 31, 1990. At this point, while I waited, Agent Saewitz located a Form 3244- A "Payment Posting Voucher Examination" and had a secretary type various information on the Form 3244-A. Agent Saewitz explained to me that the IRS uses Form 3244-A internally to post payments to taxpayer accounts and Agent Saewitz then provided me with a copy of the document. Upon examination of Form 3244-A, I noticed that the "Cash Bond Box" had been erroneously checked. Immediately, I objected to the characterization of the payment as a cash bond. I explained to Agent Saewitz that the \$7,000,000 represented an advance payment of additional tax and related interest. Agent Saewitz responded that it would eventually be posted as the taxpayer designated it in the transmittal letter, but that for purposes of processing by the IRS collections department he was required to check either the "cash bond" box or the "Section 316 (C)" box. Since Agent Saewitz believed that Section 316 definitely did not apply, he said that he checked the "cash bond" box by default. He explained that the remittance would be posted as a payment of tax on the Company's transcript and that the interest would be deductible in 1990 by doing it this way. Again, I vigorously protested the checking of the "cash bond" box, but Agent Saewitz replied again that it had to be checked or "Collections" would not be able to process and accept the payment. Agent Saewitz acknowledged that he could understand my uneasiness and said that since he was the IRS Audit Team Coordinator for the Company that he would allow the interest expense as a deduction upon audit of the 1990 tax year. Agent Saewitz then suggested that he could have his secretary type the words

TAX ADJ	2,000,000
INTEREST	<u>1,500,000</u>
	3,500,000

for each year on the Form 3244-A. Agent Saewitz said that by doing this the Company's intent to make a payment of tax and interest would be clearly evident. At this point having been told by Agent Saewitz that I had no other options, I delivered the payment as Agent Saewitz had arranged it.

On October 5, 1995 I received Information Document Request Number 12 regarding the 1988 through 1991 IRS Audit of the Company. This IDR requested workpapers on how the 1990 payment was handled on the Company's tax return. On April 9, 1996 I received "Form 5701 Number 2 Notice of Proposed Adjustment" regarding disallowance of the Company's 1990 interest deduction resulting from the December 31, 1990 payment. Sometime between October 5, 1995 and April 9, 1996 I realized that Agent Saewitz no longer considered the Company's December 31, 1990 payment to be a payment of tax and interest, but now considered the payment to be a deposit in the nature of a cash bond.

Under penalties of perjury, I state and swear that this statement is true, correct and complete, to the best of my knowledge and belief.

  
Jerome P. Hackman

CASH TO ACCRUAL ADJUSTMENT FOR ALL  
SCRIPPS HOWARD NEWSPAPERS & UNITED FEATURE SYNDICATE  
FROM 01/01/82 TO 01/01/87 BY YEAR  
AND CUMULATIVE TO 01/01/82

JPH 12/21/90

COMPANY	TOTAL 487 ADJ. TOTAL 487 ADJ. & TOTAL 446 ADJ. BY YEAR 1981	TOTAL 487 ADJ. TOTAL 487 ADJ. & TOTAL 446 ADJ. BY YEAR 1982	TOTAL 487 ADJ. TOTAL 487 ADJ. & TOTAL 446 ADJ. BY YEAR 1983	TOTAL 487 ADJ. TOTAL 487 ADJ. & TOTAL 446 ADJ. BY YEAR 1984	ESTIMATE OF TOTAL 446 ADJ. BY YEAR 1985 & 1986	TOTAL
	1981	1982	1983	1984	1985 & 1986	TOTAL
BIRMINGHAM POST	1125,783.50	275,921.00	(238,096.00)	112,503.00	(4,026.50)	20,518.00
CINCINNATI POST	1758,687.00	1,189,512.00	16,627,887.00	593,556.00	5,990,881.00	387,375.00
COLUMBUS CITIZEN JOURNAL	1,057,610.00	460,197.00	2,065,323.00	1,209,921.00	(4,793,051.00)	8.00
CORRIER	135,051.50	25,306.00	25,306.00	0.00	(128,920.50)	56,743.00
DENVER PUBLISHING	4,387,708.50	3,406,592.00	2,188,752.00	2,609,853.00	1,138,288.50	13,730,994.00
VERALD POST	305,734.50	74,599.00	46,875.00	20,398.00	139,602.50	407,944.00
MEMPHIS PUBLISHING	1,826,716.00	816,909.00	1,116,600.00	253,185.00	3,545,537.00	7,558,347.00
KNOXVILLE NEWS SENTINEL	493,837.50	61,284.00	315,082.00	(247,105.00)	1,825,953.50	2,449,046.00
NEW MEXICO STATE TRIBUNE	531,362.00	31,259.00	(8,091.00)	(24,852.00)	(483,347.00)	46,531.00
PITTSBURGH PRESS	2,204,559.00	(222,201.00)	(165,660.00)	587,208.00	8,841,679.00	11,245,585.00
STUART NEWS	261,462.50	(26,955.00)	(66,065.00)	418,148.00	(155,317.50)	431,273.00
THE TATTLER	782,146.00	163,052.00	88,441.00	30,419.00	(258,168.00)	803,890.00
ILLIED	50,811.50	(110,786.00)	123,600.00	12,531.00	(26,068.00)	50,088.50
J.W. SCRIPPS-HOME OFFICE	83,911.00	(664,339.00)	80,560.00	409,192.00	458,712.00	368,036.00
SCN	389,776.50	191,775.00	(31,376.00)	(104,026.00)	52,508.50	498,658.00
SUPPLY COMPANY	(8,462.00)	30,846.00	(34,527.00)	22,510.00	(18,803.00)	764.00
UNITED FEATURE SYNDICATE	1,002,028.00	82,840.00	(2,032,770.00)	1,381,788.00	184,278.00	597,364.00
INCOME BY YEAR	12,619,176.00	5,784,211.00	(3,155,993.00)	7,265,229.00	16,140,533.50	38,653,156.50

INCOME BY YEAR	5,784,211.00	(3,155,993.00)	7,265,229.00	16,140,533.00	26,033,980.50
TAX RATE	46%	46%	46%	46%	46%
TAX BY YEAR	2,660,737.08	(1,451,756.78)	3,342,005.34	7,424,645.18	11,975,631.03
LESS CASH TAX BOND PAYMENT ON 12/20/88	3,000,000.00	0.00	2,500,000.00	0.00	5,500,000.00
TOTAL TAX DUE	(339,262.92)	(1,451,756.78)	842,005.34	7,424,645.18	8,475,631.03



SCRIPPS 00129

**Hackman, Jerome**

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**From:** Hackman, Jerome  
**To:** Castellini, Dan  
**Cc:** Carroll, Mike; Stafford, Rob  
**Subject:** IRS Treatment of \$45M Payment for Proposed Audit Adjustments  
**Date:** Monday, February 13, 1995 5:43PM

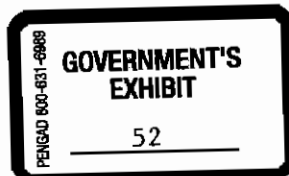
Per discussion with Sid Saewitz, he has been told by IRS Exam Support Division that the \$45M payment made on 12/30/94 has been applied as an "Advance Payment Of a Tax Deficiency." Any overpayment remaining after interest and taxes have been assessed on our proposed adjustments will earn interest at a rate of 6.5% effective 1/01/95. Since this has been recorded by IRS has an "Advance Payment Of a Tax Deficiency" and not a "Cash Bond" it is at IRS discretion whether the overpayment will be refunded to the taxpayer. Sid says typically the IRS will not issue a refund until that year under audit is closed for "APTD" payments. I asked Sid what about payments made for years not yet under audit? He did not know if we could get our money back if overpaid for yaars 1991-1993.

The Exam Support Division told Sid that since taxpayer did not actually designate the \$45M payment as a cash bond it cannot therefore be treated as such. If Scripps Howard had designated the payment as a cash bond we could get a refund upon request. A deposit in the nature of a cash bond would serve to stop the running of interest on a deficiency, but if overpaid the IRS would not be obligated to pay the taxpayer interest.

I told Sid that we need something in writing to document his verbal statements. Sid told me that he does not plan on giving us anything in writing. I suggested that we will probably follow this up with at least a phone call to the Philadelphia account section to obtain a computer printout of the SH account.

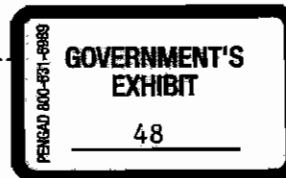
Mike--If you want to discuss this issue with Sid tomorrow, you can reach him at 684-2145.

SCRIPPS 00090



12/28/90

Mike:



SCRIPPS 00091

D) c called 12/27 saying he would like to delay \$ 7M payment until 1/4/91 because banks would charge a higher interest rate on a year end loan than by waiting until 1st week of 1991.

His question was could we deduct \$ 3M of interest in 1990 if we waited to make <sup>\$ 7M</sup> payment until 1991? They will set up a \$ 3M interest accrual for books.

It seems to me we would have to at least pay the \$ 4M in tax by year end in order to set up the liability for interest since an RAP for 1985 & 1986 has not been delivered to Scripps Howard by IRS, (although under 461(f) all events have occurred to fix the liability - IRS switched us to accrual in 1980, the amount can be accurately determined - \$ 3M of interest economic performance occurs since interest economically accrues for accrual basis companies)

A payment of tax without calling it a cash bond (call it tax owed for cash to accrual switch for newspaper group) would have same effect as having an accrual return as 12/31/90



2/3  
and paying the tax which would establish an interest deduction for 1990.

DJC says he would definitely like to deduct the \$ 3M of interest in 1990 and not just stop the accumulation of further interest, therefore if we need the \$ 7M paid by 12/31/90 he will authorize it but he prefers to wait until 1/4/91 to make payment if possible and maintain a \$ 3M 1990 interest deduction.

Doug and I ironed out our differences on cash to account #'s on Wednesday. He had a 700,000 mistake on Pittsburgh Press and I forgot to back out the pre-1954 adjustment of \$ 3M.

After we were done our differences were within 500,000 of taxable income on the overall adjustment. (We still had small differences)

Instead of \$ 4.4M of tax it should be about \$ 4.7M of tax.

SCRIPPS 00092

Mike my main concern with DJC is do we have an actual liability under 461(B) [since we



have no RAR only 1980 settlement forcing us to switch to accrual basis for which we can deduct \$3.01 of interest in 1990 or even in 1991 and should we word our letter differently?

A cash bond only serves to stop the running of interest and does not give rise to an interest deduction whereas it appears if we do not designate the payment as a cash bond but call it "tax due for switch from cash to accrual basis of accounting" then the interest appears to be deductible in the year paid per Revenue Ruling 89-6.

I will discuss further with you on Monday. We deducted interest on last cash bond payment in 1988 whether correct or not. I doubt if an agent would challenge a cash payment for interest. Saksy will need to know by 11:00 Monday.

If we make no payment until 1991 I don't believe we can deduct the \$3.01 of interest in 1990 since we have no RAR for years 1985 and 1986.

Jerry

SCRIPPS 00093